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IN THIS ISSUE

GOVERNOR

Appointments 1771

Proclamation 41-3889 1771

Proclamation 41-3890 1771

Proclamation 41-3891 1772

Proclamation 41-3892 1772

Proclamation 41-3893 1772

Proclamation 41-3894 1773

Proclamation 41-3895 1773

ATTORNEY GENERAL

Request for Opinions 1775

EMERGENCY RULES

HEALTH AND HUMAN SERVICES COMMISSION

COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

26 TAC §500.20 1777

LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

26 TAC §550.213 1778

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

26 TAC §554.2802 1779

LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

26 TAC §558.960 1782

26 TAC §558.961 1783

DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

26 TAC §559.65 1783

PROPOSED RULES

TEXAS ALCOHOLIC BEVERAGE COMMISSION

SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §§34.1 - 34.4, 34.10, 34.20 - 34.22 1785

16 TAC §§34.3 - 34.6 1792

ENFORCEMENT

16 TAC §§35.1 - 35.4 1793

ENFORCEMENT

16 TAC §35.7 1797

16 TAC §35.11 1797

16 TAC §35.21 1797

16 TAC §35.31, §35.32 1797

16 TAC §35.41 1798

16 TAC §35.50, §35.51 1798

GUN REGULATION

16 TAC §36.1 1798

LEGAL

16 TAC §37.61 1799

AUDITING

16 TAC §§41.17 - 41.26 1800

16 TAC §§41.17 - 41.27 1801

ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING

16 TAC §50.33 1804

TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

LICENSING FOR ENGINEERS

22 TAC §133.23 1807

22 TAC §133.97 1808

LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS

22 TAC §134.23 1810

22 TAC §134.97 1810

ENGINEERING FIRM REGISTRATION

22 TAC §135.3 1811

SURVEYING FIRM REGISTRATION

22 TAC §136.3 1813

COMPLIANCE AND PROFESSIONALISM FOR ENGINEERS

22 TAC §§137.1, 137.12, 137.14, 137.17 1816

22 TAC §§137.31, 137.33, 137.37 1818

22 TAC §137.55, §137.57 1820

22 TAC §137.77 1820

COMPLIANCE AND PROFESSIONALISM FOR SURVEYORS

22 TAC §§138.1, 138.5, 138.12, 138.14, 138.17 1822

22 TAC §§138.31, 138.33, 138.37 1825

22 TAC §138.57, §138.61 1826

ENFORCEMENT

22 TAC §139.17 1828

22 TAC §139.35, §139.37 1829

HEALTH AND HUMAN SERVICES COMMISSION

NURSE AIDES

26 TAC §§556.2, 556.3, 556.5 - 556.13 1830

LICENSING

26 TAC §§745.609, 745.611, 745.613, 745.615, 745.617 1841

TEXAS DEPARTMENT OF INSURANCE

LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

28 TAC §§3.501 - 3.507 1844

INDEPENDENT REVIEW ORGANIZATIONS

28 TAC §12.4..1855

28 TAC §12.601..1856

LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

28 TAC §19.1710..1858

28 TAC §§19.1730 - 19.1733 1859

TRADE PRACTICES

28 TAC §§21.5401 - 21.5406 1861

COMPTROLLER OF PUBLIC ACCOUNTS

PREPAID HIGHER EDUCATION TUITION PROGRAM

34 TAC §7.103..1868

34 TAC §7.198..1869

TEXAS WORKFORCE COMMISSION

BUSINESS ENTERPRISES OF TEXAS

40 TAC §854.10, §854.11 1873

40 TAC §854.12..1875

40 TAC §§854.20 - 854.23 1875

40 TAC §§854.40 - 854.43 1877

40 TAC §854.60..1881

40 TAC §§854.80 - 854.83 1881

ADOPTED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

REIMBURSEMENT RATES

1 TAC §355.8101..1887

TEXAS ALCOHOLIC BEVERAGE COMMISSION

PORT OF ENTRY

16 TAC §§39.1 - 39.5 1887

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.276..1888

TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

GENERAL PROVISIONS

40 TAC §876.9..1892

GRANT AWARDS

40 TAC §§877.1, 877.2, 877.4...1892

RULE REVIEW

Adopted Rule Reviews

Texas Health and Human Services Commission 1895

TABLES AND GRAPHICS

....1897

IN ADDITION

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - February 2022 1919

Office of Consumer Credit Commissioner

Notice of Rate Ceilings...1919

Deep East Texas Council of Governments

Deep East Texas Council of Governments Area Agency on Aging Public-Notice Request for Proposals Senior Nutrition Program..........1919

Texas Commission on Environmental Quality

Agreed Orders...1920

Enforcement Orders...1922

Enforcement Orders...1923

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility; Registration Application No. 40328 1925

Notice of District Petition 1926

Notice of Hearing on San Antonio Water System: SOAH Docket No. 582-22-1990; TCEQ Docket No. 2021-1391-WR; Water Use Permit No. 13098 1926

Notice of Public Meeting for a New Municipal Solid Waste Permit: Proposed Permit No. 2411 1928

Notice of Water Quality Application 1928

Notice of Water Quality Application 1929

Notice of Water Rights Application..1929

Notice of Water Rights Application..1930

Texas Health and Human Services Commission

Public Notice - Community Living Assistance and Support Services (CLASS) Program...1930

Public Notice - DBMD Waiver Application 1931

Public Notice - Home and Community Based Services 1931

Public Notice - Texas Healthcare Transformation and Quality Improvement Program (THTQIP) Waiver 1932

Texas Department of Insurance

Company Licensing 1933

Texas Department of Licensing and Regulation

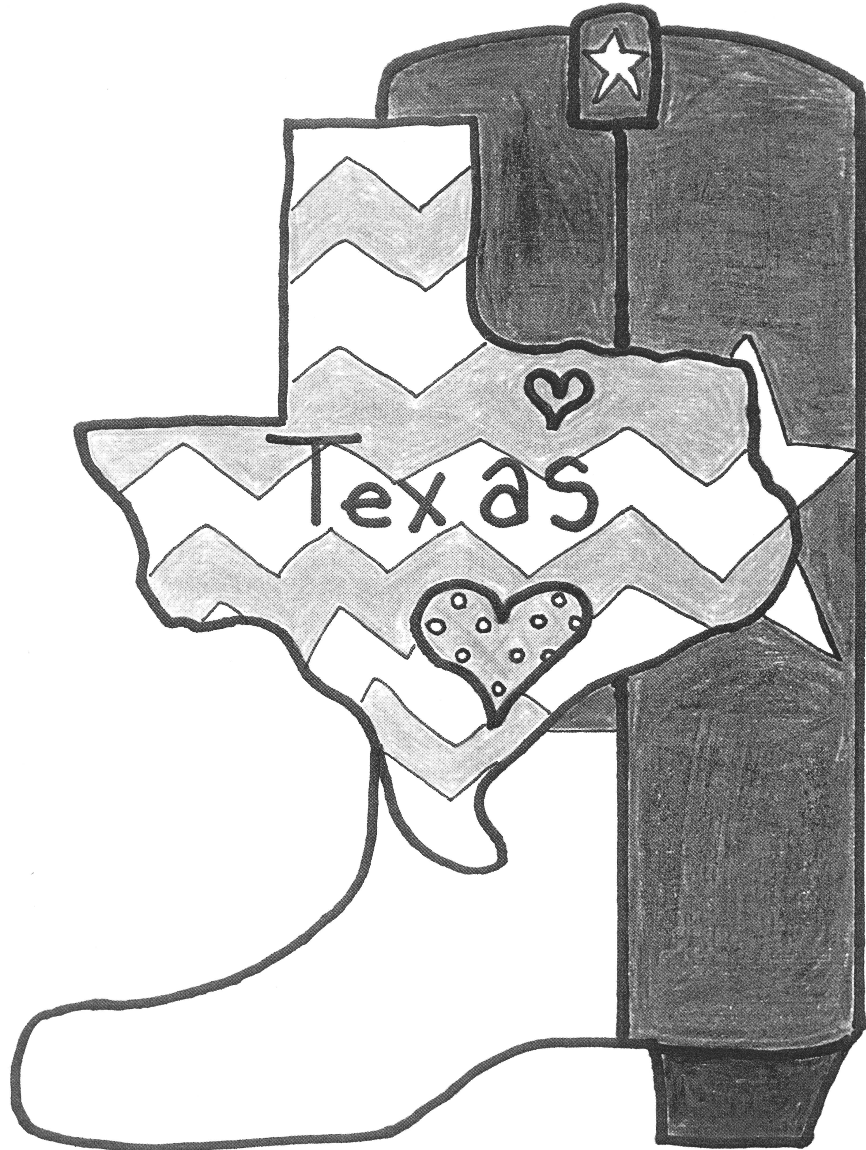
Texas Accessibility Standards..1933

Texas Lottery Commission

Scratch Ticket Game Number 2434 "MILLION DOLLAR LOTERIA" 1933

Texas Public Finance Authority

Texas Natural Gas Securitization Finance Corporation Request for Qualifications for Corporate Counsel 1940


Texas

THE GOVERNOR

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

Appointments

Appointments for March 24, 2022

Appointed to the Finance Commission of Texas for a term to expire February 1, 2026, Alice Roselyn E. "Rosie" Morris, Ph.D. of San Marcos, Texas (replacing Lawrence B. "Larry" Long of Dallas, who resigned).

Appointments for March 25, 2022

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2025, Marsha S. Moberley of Cedar Park, Texas (replacing Allen D. "D 'Wayne" Jernigan of Del Rio, who resigned).

Appointed to the Motor Vehicle Crime Prevention Authority for a term to expire February 1, 2023, Patrick D. "Dean" Smith of North Richland Hills, Texas (replacing Phillip S. "Shay" Gause of Helotes, who resigned).

Appointments for March 28, 2022

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2024, Kori A. Allen of Plano, Texas (Ms. Allen is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2024, Evelyn Cano of Pharr, Texas (Ms. Cano is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2024, Richard Martinez of San Antonio, Texas (Mr. Martinez is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2024, Jose J. "Joseph" Muniz of Harlingen, Texas (Mr. Muniz is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2024, Emma Faye Rudkin of San Antonio, Texas (Ms. Rudkin is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2024, Benjamin J. "Ben" Willis of Lumberton, Texas (replacing Aaron W. Bangor, Ph.D. of Austin, whose term expired).

Appointments for March 29, 2022

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Lorena Junco-Margain of Austin, Texas (pursuant to Executive Order GA 01).

Appointed to the Texas Funeral Service Commission for a term to expire February 1, 2025, Eric C. Opiela of Austin, Texas (replacing Melanie H. Grammar of Whitewright, who resigned).

Appointments for March 30, 2022

Appointed to the Chronic Kidney Disease Task Force for a term to expire at the pleasure of the Governor, Benedicta C. Anikputa of Austin, Texas (replacing Julie A. Llerena of Cedar Park).

Appointed to the Chronic Kidney Disease Task Force for a term to expire at the pleasure of the Governor, Corey D. Ball, M.D. of Tyler, Texas (replacing Anilkumar T. "Anil" Mangla. Ph.D. of San Antonio).

Greg Abbott, Governor

TRD-202201088

Proclamation 41-3889

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of Texas, do hereby certify that wildfires that began on February 23, 2022, pose an imminent threat of widespread or severe damage, injury, or loss of life or property in Brooks, Brown, Coleman, Comanche, Eastland, Grayson, Mason, Potter, Randall, Reynolds, and Williamson counties. In accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such a threat.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of March, 2022.

Greg Abbott, Governor

TRD-202201037

Proclamation 41-3890

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Friday, March 18, 2022, certifying that wildfires that began on February 23, 2022, posed an imminent threat of widespread or severe damage, injury, or loss of life or property in Brooks, Brown, Coleman, Comanche, Eastland, Grayson, Mason, Potter, Randall, and Williamson counties. Those same conditions continue to exist in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Blanco, Erath, Hood, Runnels, and Starr.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of March, 2022.

Greg Abbott, Governor

TRD-202201038

Proclamation 41-3891

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that severe weather which began on March 21, 2022, produced heavy rain, large hail, damaging winds, and multiple tornadoes poses an imminent threat of widespread or severe damage, injury, or loss of life or property in Bastrop, Cass, Cooke, Grayson, Guadalupe, Houston, Jack, Madison, Marion, Montague, Nacogdoches, Panola, Rusk, Upshur, Williamson, and Wise counties.

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 22nd day of March, 2022.

Greg Abbott, Governor

TRD-202201039

Proclamation 41-3892

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of March, 2022.

Greg Abbott, Governor

TRD-202201040

Proclamation 41-3893

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties, and for all state agencies affected by this disaster; and

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

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for Bee, Brewster, Brooks, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala counties, and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of March, 2022.

Greg Abbott, Governor

TRD-202201041

Proclamation 41-3894

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on February 21, 2022, certifying that exceptional drought conditions posed a threat of imminent disaster in Andrews, Angelina, Archer, Armstrong, Atascosa, Bailey, Baylor, Borden, Bosque, Bowie, Brewster, Briscoe, Brown, Callahan, Cameron, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Coke, Coleman, Collin, Collingsworth, Comanche, Cooke, Coryell, Cottle, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Frio, Gaines, Garza, Gray, Grayson, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Hidalgo, Hill, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Jack, Jeff Davis, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lampasas, La Salle, Lipscomb, Live Oak, Loving, Lubbock, Lynn, Marion, Martin, Maverick, McLennan, McMullen, Midland, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Red River, Reeves, Roberts, Rockwall, Runnels, Rusk, San Augustine, San Saba, Scurry, Shackelford, Shelby, Sherman, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Upton, Val Verde, Van Zandt, Ward, Webb, Wheeler, Wichita, Wilbarger, Winkler, Wise, Young, and Zavala counties; and

WHEREAS, those same conditions continue to exist in these and other counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster declaration issued on February 21, 2022, and declare a disaster in these additional counties: Bee, Blanco, Burnet, Cochran, Dallas, Edwards, Ellis, Gillespie, Hale, Hockley, Jefferson, Karnes, Kendall, Llano, Orange, Real, Upshur, Uvalde, Wood, and Yoakum counties.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of March, 2022.

Greg Abbott, Governor

TRD-202201042

Proclamation 41-3895

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on March 18, 2022, as amended on March 21, 2022, certifying that wildfires that began on February 23, 2022, posed an imminent threat of widespread or severe damage, injury, or loss of life or property in Blanco, Brooks, Brown, Coleman, Comanche, Eastland, Erath, Grayson, Hood, Mason, Potter, Randall, Runnels, Starr, and Williamson counties. Those same conditions continue to exist in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in Medina County.

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

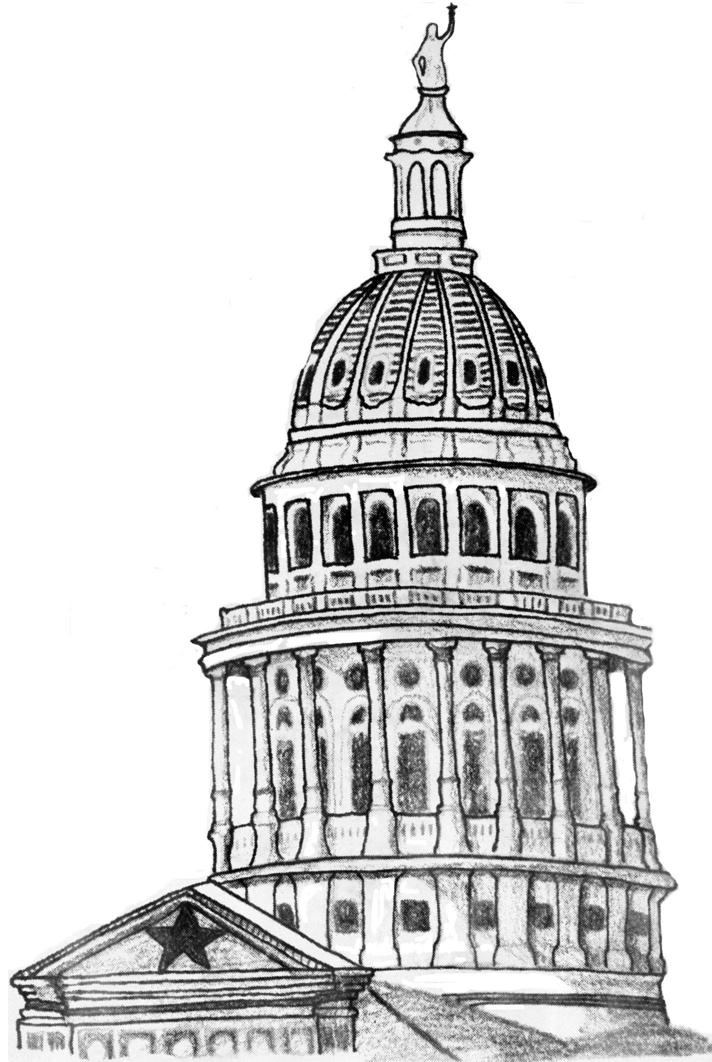
Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of March, 2022.

Greg Abbott, Governor

TRD-202201072



THE ATTORNEY GENERAL

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

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

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

Request for Opinions

RQ-0450-KP

Requestor:

Ms. Amy F. Cook

Executive Director

Texas Racing Commission

Post Office Box 12080

Austin, Texas 78711-2080

Re: Whether the Commissioner of Agriculture's designee to the Texas Racing Commission may be an individual licensed to participate in racing (RQ-0450-KP)

Briefs requested by April 25, 2022

RQ-0451-KP

Requestor:

The Honorable Robert H. Trapp

San Jacinto County District Attorney

1 State Highway 150, Room 21

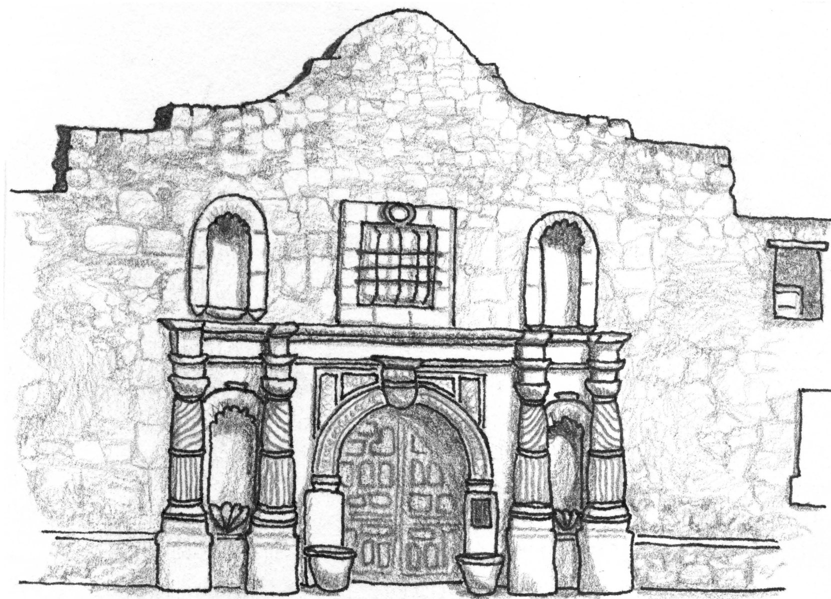
Coldspring, Texas 77331-0403

Re: Use of CARES Act funds to increase salaries of employees in a sheriff's department in the middle of the budget year (RQ-0451-KP)

Briefs requested by April 27, 2022

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

TRD-202201080
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: March 29, 2022



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 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER B. END STAGE RENAL DISEASE FACILITIES

26 TAC §500.20

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 500 COVID-19 Emergency Health Care Facility Licensing, new §500.20, ESRD Off-Site Facilities During the COVID-19 Pandemic, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. This emergency rule will allow end stage renal disease (ESRD) facilities to treat and train dialysis patients more effectively during the COVID-19 pandemic. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow a currently licensed ESRD facility to apply to operate an off-site outpatient facility without obtaining a new license at: (1) an ESRD facility that is no longer licensed that closed within the past 36 months; (2) a mobile, transportable, or relocatable medical unit; (3) a physician's office; or (4) an ambulatory surgical center or freestanding emergency medical care facility that is no longer licensed that closed within the past 36 months.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §251.003 and §251.014. 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 the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §251.003 requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility. Texas Health and Safety Code §251.014 requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

This new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 251.

§500.20. ESRD Off-Site Facilities During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.

(b) An end stage renal disease (ESRD) facility, licensed under Texas Health and Safety Code Chapter 251, that meets the requirements of this emergency rule may use an off-site facility under its current license for added services or an increased number of stations to meet patient needs in response to COVID-19 for the duration this emergency rule is in effect or any extension of this emergency rule is in effect.

(c) The off-site facility must be:

(1) an ESRD facility no longer licensed under Texas Health and Safety Code Chapter 251 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection, which:

(A) shall be capable of meeting the current licensing requirements in the Texas Administrative Code (TAC) Title 25 §117.32(a) - (e) (relating to Water Treatment, Dialysate Concentrates, and Reuse); or

(B) shall provide integrated hemodialysis machines, which incorporate water treatment and dialysis preparation and delivery into one system.

(2) a mobile, transportable, or relocatable medical unit utilizing integrated dialysis systems and defined as any trailer or self-propelled unit:

(A) equipped with a chassis on wheels;

(B) without a permanent foundation; and

(C) intended for provision of medical services on a temporary basis.

(3) a physician's office built after January 1, 2015, that is currently in use, which shall be used only for home training of COVID-19-negative dialysis patients.

(4) a physician's office built after January 1, 2015, that has closed within the past 12 months, which shall be used only for home training of COVID-19- negative dialysis patients and complies with the following:

(A) the office shall be well maintained with all building systems in good working condition; and

(B) manual fire extinguishers shall be provided in accordance with NFPA 10: Standard for Portable Fire Extinguishers.

(5) an ambulatory surgical center no longer licensed under Texas Health and Safety Code, Chapter 243 that closed within the past 36 months and will be used for either home training or providing in-center dialysis treatment where both of the following are met:

(A) the ESRD facility shall only provide integrated hemodialysis machines; and

(B) the building layout shall provide a direct view of all patient stations from a nurse's station.

(6) a freestanding emergency medical care facility no longer licensed under Texas Health and Safety Code, Chapter 254 that closed within the past 36 months and will be used for either for home training services or providing in-center dialysis treatment where both of the following are met:

(A) the ESRD facility shall only provide integrated hemodialysis machines; and

(B) the building layout shall provide a direct view of all patient stations from a nurse's station.

(d) Prior to receiving approval to use an off-site facility under this emergency rule, the ESRD facility must submit to INFO-HFLC@hhs.texas.gov on a form provided by HHSC:

(1) an application to use an off-site facility for the addition of services or increased number of stations; and

(2) water culture testing results that meet the requirements of 25 TAC §117.32(c)(4).

(e) HHSC has the discretion to approve or deny any application to use an off-site facility under this emergency rule. HHSC may require an inspection of the off-site facility or additional documentation prior to considering an application.

(f) In order to protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for an ESRD facility to use the off-site facility under this emergency rule at any time. Any patients being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the ESRD facility's policies and procedures.

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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

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CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS
SUBCHAPTER C. GENERAL PROVISIONS
DIVISION 1. OPERATIONS AND SAFETY PROVISIONS

26 TAC §550.213

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 550, Licensing Standards for Prescribed Pediatric Extended Care Centers, Subchapter C, General Provisions, Division 1, Operations and Safety Provisions, new §550.213, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect minors being served in a prescribed pediatric extended care center and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require prescribed pediatric extended care centers to develop and enforce policies and procedures for infection control.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Health and Safety Code §248A.101. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and

hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §248A.101 authorizes the Executive Commissioner of HHSC to adopt rules to implement Texas Health and Safety Code §248A, including rules prescribing minimum standards to protect the health and safety of minors being served in prescribed pediatric extended care centers.

The new section implements Texas Government Code §§2001.034 and 531.0055 and Texas Health and Safety Code §248A.101.

§550.213. Emergency Rule for Prescribed Pediatric Extended Care Center Response to COVID-19--Screening and Infection Control Policies and Procedures.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a prescribed pediatric extended care center to take the following measures. The screening required by this section does not apply to emergency services personnel entering the center in an emergency.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, therapists, dieticians, social workers, and home health workers whose services are necessary to ensure minors' health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of Disability Rights Texas, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services and persons with legal authority to enter.

(c) A prescribed pediatric extended care center must screen every person in accordance with HHSC guidance upon arrival and must not allow a person who does not pass the screening to enter or remain in the center.

(d) A minor who does not pass screening as described in subsection (c) of this section must not be allowed into the center until they meet the CDC recommendations to be able to return to the center.

(e) A prescribed pediatric extended care center must allow entry of visitors and persons providing critical assistance, in accordance with subsection (c) of this section.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility unless the individual does not pass the screening requirement in subsection (c) of this section.

(g) A prescribed pediatric extended care center must develop and enforce written policies and procedures for infection control. The written standards, policies, and procedures for the center must include standard and transmission-based precautions to prevent the spread of communicable diseases.

(h) If this emergency rule is more restrictive than any minimum standard relating to a prescribed pediatric extended care center, this emergency rule will prevail so long as this emergency rule is in effect.

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.

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Karen Ray
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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 and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for 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 the Texas Department of State Health Services (DSHS) 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) 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.

(10) Unknown COVID-19 status--The status of a resident, except 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) resident transport protocols; and

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

(c) Screening.

(1) Visitors. A nursing facility must screen all visitors in accordance with the Texas Health and Human Services Commission (HHSC) guidance upon arrival and must not allow a visitor who does not pass the screening to enter or remain in the facility.

(2) Residents. A nursing facility must screen each resident in accordance with HHSC guidance upon admission or readmission to the facility. Resident screenings must be documented in the resident's chart. A resident who meets any of the criteria must be cohorted appropriately.

(3) Employees and contractors. A nursing facility must screen each employee or contractor in accordance with HHSC guidance upon arrival and must not allow a person who does not pass the screening to enter or remain in 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, in accordance with HHSC guidance upon arrival and must not allow a person who does not pass the screening to enter or remain in the facility.

(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.

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

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

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

(B) 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) Infection Prevention and Control Procedures. 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.

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

(1) Notify 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 nursing facility's first positive case of COVID-19 in a staff member or resident and the facility's first positive case of COVID-19 in a staff member or resident after a facility has been without new cases for 14 days or more.

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

(h) 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: LTCRSurvey-Operation@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 chapter (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 chapter; or

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

(i) 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. 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 chapter (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 chapter 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 chapter (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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

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

26 TAC §558.960

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 558, Licensing Standards for Home and Community Support Services Agencies, new §558.960, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect clients served by home and community support services agencies (HCSSAs) and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to define criteria for screening staff, clients, and household members for COVID-19, to require that related documentation be made available to HHSC upon request, and to clarify that HCSSA staff must comply with a long-term care facility's infection control protocols when entering to provide essential services.

STATUTORY AUTHORITY

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

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §142.012.

§558.960. Emergency Rule for HCSSA Response to COVID-19.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health safety risk and requires a home and community support services agency (HCSSA) to take the following measures. The screening required by this section does not apply to emergency services personnel entering an agency in an emergency situation.

(b) An agency must develop and enforce policies and procedures for infection control. The written standards, policies, and procedures must include standard and transmission-based precautions to prevent the spread of infectious diseases.

(c) Agency staff have legal authority to enter a facility licensed under Texas Health and Safety Code Chapters 242, 247, or 252, or Texas Human Resources Code Chapter 103, to provide services to the facility's residents who are agency clients. Agency staff entering a licensed facility must follow the infection control protocols of the facility.

(d) An agency must screen its staff and must not allow staff to remain in the agency, enter a licensed facility, or make home visits if

the employee, volunteer or contractor does not pass screening in accordance with HHSC guidance.

(e) The agency must determine if a scheduled home visit requires essential services or non-essential services.

(1) Essential services include a service that must be delivered to ensure the client's health and safety, such as nursing services, therapies, medication administration, assisting with self-administered medications and other personal care tasks, wound care, transfer, or ambulation. This is determined on a case-by-case basis and according to the client's need for the service on the day of the scheduled visit in accordance with the plan of care, care plan, or individualized service plan (ISP).

(2) If the visit requires non-essential services, the visit:

(A) must be conducted by phone or video conference, if possible; or

(B) must be rescheduled for a later date.

(3) If the visit requires essential services, staff must conduct the visit in person and screen the client and household members using the same criteria for staff that is described in subsection (d) of this section and proceed as described in subparagraphs (A) and (B) of this paragraph.

(A) The visit must be conducted following agency infection control protocols.

(B) If the client or a member of the household does not meet screening criteria, conduct the visit as indicated for the type of service provided.

(4) An agency must document any missed visits in the plan of care, care plan, or ISP and notify the attending physician or practitioner, if applicable.

(f) Providers of essential services include HCSSA employees and contractors, including but not limited to physicians, nurses, hospice aides, home health aides, attendants, social workers, therapists, spiritual counselors, and volunteers in any of those roles.

(g) A parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse may make the monthly supervisory visit required for branch supervision by §558.321(d)(1) of this chapter (relating to Standards for Branch Offices) or as required for alternative delivery site by §558.322(c)(1) of this chapter (relating to Standards for Alternate Delivery Sites) by virtual communication, such as video or telephone conferencing systems.

(h) A hospice registered nurse may make the supervisory visit required for hospice aides in §558.842(d) of this chapter (relating to Hospice Aide Services) by virtual communication, such as video or telephone conferencing systems.

(i) If this emergency rule is more restrictive than any minimum standard relating to a HCSSA, this emergency rule will prevail so long as this emergency rule is in effect.

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.

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

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26 TAC §558.961

The Texas Health and Human Services Commission is renewing the effectiveness of emergency new §558.961 for a 60-day period. The text of the emergency rule was originally published in the December 10, 2021, issue of the *Texas Register* (46 TexReg 8290).

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CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

26 TAC §559.65

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 559, Day Activity and Health Services Requirements, new §559.65, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect day activity and health services clients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require day activity and health services providers to develop and enforce policies and procedures for infection control.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code §103.004 and §103.005. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Human Resources Code §103.004 authorizes the Executive Commissioner of HHSC to adopt rules implementing Texas Human Resources Code Chapter 103, concerning Day Activity and Health Services Facilities. Texas Human Resources Code §103.005 authorizes the Executive Commissioner of HHSC to adopt rules governing the standards for safety and sanitation of a licensed day activity and health services facility.

The new section implements Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code Chapter §103.004 and §103.005.

§559.65. Emergency Rule for Day Activity and Health Services Response to COVID-19- Screening, Activities and Infection Control Policies and Procedures.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a day activity and health services facility to take the following measures. The screening required by this section does not apply to emergency services personnel entering the facility in an emergency situation.

(b) In this section:

(1) providers of essential services include contract doctors, contract nurses, contract healthcare workers, spiritual clergy, volunteers assisting with facility- coordinated group activities and home health workers whose services are necessary to ensure client health and safety;

(2) persons with legal authority to enter include law enforcement officers and government personnel performing their official duties; and

(3) persons providing critical assistance include providers of essential services and persons with legal authority to enter.

(c) A day activity and health services facility must screen every person in accordance with HHSC guidance upon arrival and must not allow a person who does not pass the screening to enter or remain in the facility.

(d) A day activity and health services facility must allow entry of visitors and persons providing critical assistance, including volunteers assisting with facility-coordinated group activities, in accordance with subsection (c) of this section.

(e) A facility must develop and enforce policies and procedures for infection control. The written standards, policies, and procedures must include standard and transmission-based precautions to prevent the spread of communicable diseases.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual does not pass the screening required in subsection (c) of this section.

(g) A facility may offer facility-coordinated group activities as well as allow volunteers to enter the facility to assist with the activities. Facilities that allow volunteers to enter the facility to assist with activities must ensure the following:

(1) volunteers must be trained on proper infection and prevention control standards;

(2) volunteers must be screened in accordance with subsection (c) of this section; and

(3) volunteers must be overseen by facility staff.

(h) Facilities must execute a written agreement with all volunteers documenting training requirements and facility policies regarding infection and prevention control standards.

(i) If this emergency rule is more restrictive than any minimum standard relating to a day activity and health services facility, this emergency rule will prevail so long as this emergency rule is in effect.

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 March 23, 2022.

TRD-202201033
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: March 24, 2022
Expiration date: July 21, 2022
For further information, please call: (512) 438-3161

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 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §§34.1 - 34.4, 34.10, 34.20 - 34.22

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes amendments to §§34.1, 34.2 and new 34.3, 34.4, 34.10, 34.20 - 34.22, related to Schedules of Sanctions and Penalties.

Background and Summary

The amended and new rules result from review of chapter 34 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. Most of the amendments result from reorganization of Chapters 34-37 of the commission's rules to optimize the placement of related rules making relevant rules easier to locate; make updates necessitated by recent legislative enactments or new online portal technology; and make editorial revisions for increased clarity and transparency. The commission does not intend to make significant, substantive changes to the interpretation or implementation of the commission's rules related to sanctions and penalties through this rulemaking.

This rulemaking includes new figure §34.2(e), regarding penalties and sanctions for health, safety, and welfare violations, and new figure §34.10(g) (which is based upon the repealed figure in §34.3(a), with changes) regarding regulatory violations. The tables contain recommended base penalties and sanctions for various violations of laws and rules under the commission's jurisdiction. With new figure §34.2(e), the commission proposes a table for health, safety, and welfare violations that substantially mirrors the current table applicable to regulatory violations. Consistency between the two tables will aid in their use and interpretation. The content of the tables has also been reviewed and updated with regard to citations and to reflect the legislature's recent recategorization of beer and ale into a single, malt beverage category.

Section by Section Discussion

§34.1 General Provisions

The commission proposes amendments to §34.1 to group existing definitions together at the outset of the chapter; add a definition of the word "written" to accommodate electronic communications; remove a section that appears to limit the commission's and other parties' ability to resolve an administrative action with a combination of a civil penalty and days of license or permit suspension; and otherwise improve organization and readability.

§34.2 Schedule of Sanctions and Penalties for Health, Safety, and Welfare Violations

The commission proposes amendments to §34.2 to group rules generally applicable to health, safety, and welfare sanctions and penalties by grouping them together at the beginning of the rule. By placing the generally applicable provisions here, the commission intends to provide clear rules applicable to the use of figure §34.2(e), the table of sanctions and penalties, consolidated and immediately preceding the table to which they apply.

Implied (a) is amended to clarify that the penalty recommendations in figure §34.2(e) are in addition to the commission's authority to suspend or cancel a license or permit as authorized by statute. The standard alternate penalty of $300 per day of suspension is also added here as a general rule and removed from each individual cell in §34.2(e), for brevity.

New subsection (b) is based upon current §34.1(h) and reminds the reader that the penalty chart for health, safety, and welfare violations is non-exclusive. The verbiage is clarified and proposed to be placed here, at §34.2(b), so that it is adjacent to §34.2(e) to which it applies. The absence of a particular violation from the chart should not be construed to limit the commission's authority to take enforcement action for that violation. One reason for leaving some violations out of Figure §34.2 is that they do not lend themselves to clear categorization. For example, offenses against the general welfare and so-called "place or manner" violations can vary widely in their severity and the danger posed to the public; therefore, they require individual assessment of appropriate penalties and sanctions. The next rule, proposed §34.3, addresses assessment of penalties and sanctions for offenses against the general welfare and "place or manner" violations.

New subsection (c) further clarifies the applicability of the table of sanctions and penalties by specifying a non-exclusive list of common statutory and rule violations that are not included in the table and will be assessed sanctions and penalties based upon the facts and circumstances of the individual case.

A general provision is also added at subsection (d) to clarify that once a contested case has been initiated under the Administrative Procedure Act, the parties and judges are not limited to the penalties listed in Figure §34.2(e) but may use them as a guideline. A similar provision exists at current §34.1(j), but the content is proposed to be moved to the beginning of §34.2 to highlight it for the benefit of those using the associated sanctions and penalties table. The rule reflects that parties are free to negotiate a settlement that differs from the penalties in Figure §34.2(e) and administrative law judges or other judges are likewise free to as-

sess penalties as they see fit under the facts and circumstances of the individual case elicited during their proceedings.

Finally, new subsection (e) is added to emphasize and reflect the commission's statutory authority to suspend or cancel a license or permit, without regard to any provision of this rule.

Figure 16 TAC §34.2(e) includes the information in current figure 16 TAC §34.2(e), breaking out the statutory and rule citations into an additional column and removing the repetitive $300 per day alternate penalty from the table. The commission proposes these changes to enable rule users to quickly and easily identify the proper violation by using the statutory and/or rule citation for the violation (or vice versa); to substantially mirror its companion table in proposed figure 16 TAC §34.10(g) to reduce the potential for confusion and aid in consistent application; and to streamline the table by moving the $300 per day alternate penalty into a generally applicable rule.

§34.3 Offenses against the General Welfare; Place or Manner Violations

The commission proposes new §34.3, based upon current §35.31. The commission proposes that this rule be placed in sequence with other sanctions and penalties rules related to public health, safety, and welfare, rather than separately in the chapter for Enforcement, where it is currently located. The term of art "Place or Manner Violations" is also added to provide a signpost to the rule for stakeholders accustomed to using that term to describe a common category of violations. In addition, subsection (b)(18) adds solicitation of any person to buy drinks for consumption by the retailer or any of the retailer's employees as an offense under this section, to conform to recently enacted legislation.

§34.4 Suspensions

The commission proposes new §34.4 to contain the provisions of current §37.61, finding that this rule should also be placed in sequence with other sanctions and penalties rules related to public health, safety, and welfare, rather than separately in the chapter entitled "Legal," where it is currently located. The only change from the current language in §37.61 is to change "permit or license" to "license or permit" for continuity throughout the commission's rules.

§34.10 Sanctions for Regulatory Violations

The commission proposes new §34.10 based upon current §34.3. The commission recommends reorganizing the chapter to group provisions related to sanctions and penalties for public safety, health, and welfare violations together, followed by provisions related to sanctions for regulatory violations. This reorganization to separate the rules for the two categories of violations requires moving this rule to a later point in the chapter. The proposed amendments also highlight rules generally applicable to regulatory sanctions by grouping them together at the beginning of the rule.

Subsection (a) is revised from the current rule provision to highlight the existing rule provision authorizing the use of the Penalty Policy to augment or discount the base penalty recommended for a violation (current §34.3(c)).

Subsection (b) is updated to reflect the new location of the regulatory sanctions table after reorganization.

A general provision is also added at subsection (c) to clarify that once a contested case has been initiated under the Administrative Procedure Act, the parties and judges are not limited to the penalties listed in Figure §34.10 but may use them as a guideline. A similar provision exists at current §34.1(j), but the content is proposed to be moved to the beginning of §34.10 to highlight it for the benefit of those using the associated sanctions and penalties table. The rule reflects that parties are free to negotiate a settlement that differs from the penalties in Figure §34.10 and administrative law judges, or other judges are likewise free to assess penalties as they see fit under the facts and circumstances of the individual case elicited during their proceedings. This provision mirrors proposed §34.2(d), applicable to public safety, health, and welfare violations.

New subsection (d) is added to emphasize and reflect the commission's statutory authority to suspend or cancel a license or permit, without regard to any provision of this rule.

The rule is also revised from the current rule so that the recommended penalty or sanction is assessed according to the Penalty Policy in effect on the date the violation occurred, rather than the date that a Notice of Violation is issued (see subsections (a) and (e)). This prevents imposition of a revised Penalty Policy on a violation that occurred prior to the effective date of the revision.

Figure 16 TAC §34.10(g) includes the information in current figure 16 TAC §34.3(a) The content of the table has been reviewed and updated to correct citations and to reflect the legislature's recent recategorization of beer and ale into a single, malt beverage category.

§34.20 Attribution of Actions of Employee to License or Permit Holder

The commission proposes new §34.20 to contain the contents of current §34.4, without changes. This rule is being moved down to make room for other rules at the beginning of the chapter. It will be moved once again in a subsequent rulemaking to a separate chapter reserved for rules related to seller/server certification and liability of a license or permit holder for actions of an employee or delivery driver.

§34.21 Mandatory Participation in Seller Server Certification

The commission proposes new §34.21 to contain the contents of current §34.5, without changes. This rule is being moved down to make room for other rules at the beginning of the chapter. It will be moved once again in a subsequent rulemaking to a separate chapter reserved for rules related to seller/server certification and liability of a license or permit holder for actions of an employee or delivery driver.

§34.22 Liability for Actions of Alcohol Delivery Drivers

The commission proposes new §34.22 to contain the contents of current §34.6, without changes. This rule is being moved down to make room for other rules at the beginning of the chapter. It will be moved once again in a subsequent rulemaking to a separate chapter reserved for rules related to seller/server certification and liability of a license or permit holder for actions of an employee or delivery driver.

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 because 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 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

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 more logical placement and grouping of related rules, aiding in location of rules that affect one another. Revisions for clarity will also facilitate the public's comprehension of commission 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 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 or in fees paid to the agency. The proposed rules do not create a new regulation or expand, limit, or repeal an existing regulation. The proposed rules do not impact the number of individuals subject to the rules' applicability. The proposed rules will not affect the economy of the state.

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. 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 April 18, 2022, 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.

The rules are proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code and Government Code §2001.039, which requires review of each commission rule at least every four years.

Current §§34.3 - 34.6 are proposed to be repealed simultaneously with the publication of these proposed new rules. The proposed new rules do not otherwise impact any other current rules or statutes.

§34.1. General Provisions.

(a) This rule relates to §§11.61, 11.64, 11.641, 104.01, and 106.13 of the Alcoholic Beverage Code.

(b) Definitions. When used in this chapter, the following words and have the following meanings unless the context clearly indicates otherwise:

(1) Assist--as used in Alcoholic Beverage Code §§61.71(a)(11) and 106.09(a), the word "assist" shall not be construed to mean that a person under 18 years of age assists in selling, serving, preparing, handling, or dispensing alcoholic beverages merely by being employed to work on or about a premises where alcoholic beverages are sold or served, as long as the person under 18 years of age does not have a direct and immediate connection with any particular sale or service of such beverages.

(2) The Code--the Texas Alcoholic Beverage Code.

(3) Lewd and vulgar entertainment or acts--Any sexual offenses contained in the Texas Penal Code, Chapter 21, or any public indecency offenses contained in the Texas Penal Code, Chapter 43.

(4) Narcotic--Any substance defined in the Texas Controlled Substances Act, §481.002(5), (6), (7), or (26).

(5) Written--any method of writing by any method of transmission, including hand-written or typed and transmitted by hand delivery, mail, e-mail, fax, or through an internet-based management system directly accessible by the recipient.

(c) [~~(b)~~] Authorized [~~Agents, compliance officers or other specifically designated~~] commission personnel may [~~have authority to~~] settle an administrative action initiated [~~a complaint issued~~] by the commission [~~against a person for a violation of the Texas Alcoholic Beverage Code (Code), prior to filing a contested case under Government Code, Chapter 2001, Subchapter C (Administrative Procedure Act)~~].

[~~(c) A settlement authorized by this chapter must reflect the number of days a permit will be suspended or the amount of civil penalty authorized per day in lieu of suspension and shall conform to the other provisions of this chapter.~~]

(d) Written warnings. A written warning is an administrative notice issued by a representative of the commission to the license or permit holder documenting a violation of the Code or commission rules and:

(1) may be issued by authorized commission personnel [~~A written warning may be issued~~] for any violation if the person issuing the written warning determines [~~it is determined by designated commission personnel~~] it to be an effective deterrent from further violations of the Code or commission rules;[~~.~~]

(2) [(1)] [A written warning] may be used as an aggravating circumstance for purposes of determining the appropriate sanction under §34.2 or §34.10 of this title; and [§34.2.]

(3) [(2)] [A written warning] is subject to the rights and procedures of a contested case under the Administrative Procedure Act.

[(3) A written warning is an administrative notice issued by a representative of the commission to the permit or license holder documenting that a violation of the TABC code or rules has occurred.]

(e) Any case alleging a sale to a minor or intoxicated person in violation of [Alcoholic Beverage] Code §§11.61(b)(14), 61.71(a)(6) or 101.63 in which the unlawful sale or service directly or indirectly caused death or serious bodily injury shall be referred directly to the commission's legal services division [Legal Services Division] by authorized commission [district or regional] personnel without an offer of settlement or compromise provided to the licensee/permittee [permittee/licensee]. For purposes of this section, "serious bodily injury" has the meaning assigned by Tex. Penal Code §1.07(a)(46). [means as defined in §1.07(a)(46) of the Texas Penal Code.]

(f) Each suspension of a [permit or] license or permit shall run for consecutive days. A person assessed a suspension by the commission may be provided with an opportunity to pay a civil penalty in lieu of a suspension as provided by §11.64 of the Code. The commission may, in its discretion, agree [allow a licensee/permittee] to divide an imposed sanction between civil penalties [penalty] and suspension.

(g) A subsequent violation of the same Code provision or rule will result in a higher sanction [in the next higher violation level] if [the subsequent violation]:

(1) the person has been given written notice of the prior violation and the subsequent violation is: [is for a health, safety and welfare violation and occurs within 36 months of the prior violation, or]

(A) a health, safety, and welfare violation and occurs within 36 months of the prior violation; or

(B) a regulatory violation with a base penalty of $1,000 and occurs within 24 months of the prior violation; or

(2) the subsequent violation involves covert investigative activities. [is for a violation listed in the major regulatory violation category within 24 months of the prior violation, and]

[(3) the person has been given written notice of the prior violation, or]

[(4) the subsequent violation is issued during an undercover operation]

(h) For a violation of the Code or rules that is not listed in §34.2 of this title, the penalty or sanction must be approved by a division director prior to entering into a settlement.

[(h) The list of violations in §34.2 is not intended to be an exhaustive list of possible violations of the Code or rules of the commission.]

(i) A person authorized to enter into a settlement under this section may make a written recommendation to the executive director or the executive director's designee for [is also authorized to recommend] a deviation from sanctions in §34.2 of this title to account for [when] aggravating or mitigating circumstances [are found to exist]. The executive director or the executive director's designee must approve a recommendation to deviate from §34.2 of this title before a settlement reflecting the deviation is offered to the licensee/permittee.

[(1) A recommendation to deviate from sanctions in §34.2 must be made in writing.]

[(2) The administrator or his designee must approve a recommendation to deviate from §34.2 before the settlement may be offered.]

[(j) This chapter does not apply to a contested case brought under Chapters C and D of the Administrative Procedure Act, or a complaint or violation referred to the legal division of the commission for resolution.]

§34.2. Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations.

(a) An act or failure to act that [which] results in a violation of the Code [code] or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties according to figure 16 TAC §34.2(e) and/or a license or permit suspension or cancellation. Each sanction in figure 16 TAC §34.2(e) other than cancellation includes an optional monetary penalty of $300 per day of suspension. [as follows:]

(b) The list of violations in figure 16 TAC §34.2(e) is nonexclusive; the absence of a statute or rule from the chart does not limit the commission's statutory authority to enforce compliance with the Code and its rules by assessing penalties.

(c) Violations of Code §§11.61(b)(7), 32.17(a)(8), and 61.71(a)(16), and §34.3 of this title, which are not listed in figure §34.2(e), will be assessed sanctions based upon all relevant facts and circumstances.

(d) For a contested case brought under subchapters C and D of the Administrative Procedure Act or an investigation or violation referred to the legal services division of the commission for resolution, the sanctions and penalties in figure §34.2 may be used as a guideline but adherence is not required.

(e) Nothing in this rule shall be construed to limit the commission's authority to suspend or cancel a license or permit under §§11.38, 11.61, 32.17, 61.71, 201.075, or any other provision of the Code authorizing suspension or cancellation of a license or permit.

Figure: 16 TAC §34.2(e)

§34.3. Offenses Against the General Welfare; Place or Manner Violations.

(a) This rule relates to §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(16) of the Alcoholic Beverage Code.

(b) A licensee or permittee violates the provisions of the Code cited in subsection (a) of this section if any of the offenses listed in subsection (c) of this section are committed:

(1) by the licensee or permittee in the course of conducting its alcoholic beverage business; or

(2) by any person on the licensee or permittee's licensed premises; and

(3) the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.

(c) The offenses that are the subject of this rule include:

(1) any preparatory offense described in Chapter 15 of the Texas Penal Code;

(2) any homicide offense described in Chapter 19 of the Texas Penal Code;

(3) any trafficking or smuggling of a person or receipt of benefit from participating in a human trafficking offense described in Chapter 20A of the Texas Penal Code or 18 U.S.C. §§1581-1592;

(4) any sexual offense described in Chapter 21 of the Texas Penal Code;

(5) any assaultive offense described in Chapter 22 of the Texas Penal Code;

(6) any arson, criminal mischief or property damage or destruction offense described in Chapter 28 of the Texas Penal Code;

(7) any theft offense described in Chapter 31 of the Texas Penal Code;

(8) any fraud offense described in Chapter 32 of the Texas Penal Code;

(9) any money laundering offense described in Chapter 34 of the Texas Penal Code;

(10) any bribery offense described in Chapter 36 of the Texas Penal Code;

(11) any obstruction offense described in Chapter 38 of the Texas Penal Code;

(12) any disorderly conduct or related offenses described in Chapter 42 of the Texas Penal Code;

(13) any public indecency offense described in Chapter 43 of the Texas Penal Code;

(14) any weapons offense described in Chapter 46 of the Texas Penal Code;

(15) any gambling offense described in Chapter 47 of the Texas Penal Code;

(16) any narcotics related offense described in Chapters 481 and 483 of the Texas Health and Safety Code;

(17) any law, regulation or ordinance of the state or federal government or of the county or municipality in which the licensed premises is located, violation of which is detrimental to the general welfare, health, peace and safety of the people; and

(18) any solicitation of any person to buy drinks for consumption by the retailer or any of the retailer's employees in violation of §104.01 of the Alcoholic Beverage Code.

(d) This rule does not constitute the exclusive means by which §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(16) may be violated.

§34.4. Suspensions.

(a) This section implements Alcoholic Beverage Code (Code) §11.64(a), which requires the commission to adopt rules addressing when a suspension may be imposed without the opportunity to pay a civil penalty.

(b) The executive director or the executive director's designee may deny a licensee or permittee the option of paying a civil fine in lieu of a suspension of the license or permit if the licensee or permittee has violated one or more of the following provisions of the Code:

(1) Section 11.61(b)(14): sale to an intoxicated person by a permittee;

(2) Section 22.12: breach of the peace on the premises of a package store;

(3) Section 28.11: breach of the peace on the premises of a mixed beverage permittee;

(4) Section 32.17(a)(2): refuse to allow an authorized agent or representative to come onto the premises;

(5) Section 32.17(a)(3): refuse to furnish requested information to the commission or its agents or representatives;

(6) Section 32.17(a)(7): consumption or service of alcohol on the premises during prohibited hours;

(7) Section 61.71(a)(5): sale to a minor by a licensee;

(8) Section 61.71(a)(6): sale to an intoxicated person by a licensee;

(9) Section 61.74(a)(14): sale to a minor by a licensee;

(10) Section 69.13: breach of the peace on the premises of an on-premise retail malt beverage dealer;

(11) Section 71.09: breach of the peace on the premises of an off-premise retail malt beverage dealer;

(12) Section 101.04: refuse to allow inspection;

(13) Section 104.01(a)(4): solicitation of drinks;

(14) Section 101.63: sale to an intoxicated person;

(15) Section 106.03: sale to a minor;

(16) Section 106.06: purchase of alcohol for a minor;

(17) Section 106.15: engage in prohibited activity related to dancing by a person under 18;

(18) Chapter 105: sale or offer of sale of an alcoholic beverage during prohibited hours, or consumption or permitting consumption of an alcoholic beverage during prohibited hours;

(19) any offense relating to gambling, prostitution or trafficking of persons; or

(20) any offense relating to controlled substances or drugs.

(c) For the violations referenced in subsection (b) of this section, and after considering the circumstances required or allowed to be considered in this section, the executive director or the executive director's designee has discretion to determine whether to allow a licensee or permittee the option to pay a civil penalty in lieu of a suspension but is not required to allow such payment in lieu of suspension.

(d) In determining whether to deny a licensee or permittee the option to pay a civil penalty in lieu of a suspension, the executive director or the executive director's designee shall consider any aggravating or mitigating factual circumstances related to the violation, including but not limited to:

(1) the type of license or permit held by the violating licensee or permittee;

(2) the type of violation or violations charged;

(3) the licensee's or permittee's record of past violations, including the number, type and frequency of violations of the Code and of the rules of the commission; and

(4) the date the license or permit was issued.

(e) In addition to the circumstances listed in subsection (d) of this section that must be considered in determining whether to allow a licensee or permittee the option to pay a civil penalty in lieu of a suspension, the executive director or the executive director's designee may also consider other circumstances, including but not limited to:

(1) whether the sale of alcoholic beverages constitutes the primary or partial source of the licensee or permittee's business;

(2) whether the violation was caused by intentional or reckless conduct by the licensee or permittee;

(3) whether the violation caused the serious bodily injury or death of another;

(4) whether the character and nature of the licensee's or permittee's operation were reasonably calculated to avoid violations of the Code and rules of the commission at the time of violation; and/or

(5) whether the licensee or permittee has taken action to remediate the violation and to prevent future violations.

§34.10. Sanctions for Regulatory Violations.

(a) Regulatory violations of listed statutory and rule provisions will be assessed a base penalty of $250, $500, or $1,000 as shown in figure §34.10(g). Base penalties may be augmented or discounted based upon the number of violations and other circumstances surrounding the violation, according to the commission Penalty Policy in effect on the date the violation occurred or on the first date the violation occurred, if it is a violation that is ongoing in nature.

(b) The penalty chart in figure §34.10 is non-exclusive; the absence of a statute or rule from the chart does not limit the commission's statutory authority to enforce compliance with the Code and its rules by assessing administrative penalties.

(c) For a contested case brought under subchapters C and D of the Administrative Procedure Act or an investigation or violation referred to the legal services division of the commission for resolution, the sanctions and penalties in figure §34.10 may be used as a guideline but adherence is not required.

(d) Nothing in this rule shall be construed to limit the commission's authority to suspend or cancel a license or permit under §§11.38, 11.61, 32.17, 61.71, 201.075, or any other provision of the Code authorizing suspension or cancellation of a license or permit.

(e) The number of days of license or permit suspension offered to the respondent in lieu of the penalty shall be commensurate with the penalty assessed under this section and calculated according to the commission Penalty Policy in effect on the date the violation occurred or on the first date the violation occurred, if it is a violation that is ongoing in nature.

(f) The Penalty Policy shall be publicly available and published on the commission's web site.

(g) The commission shall review the Penalty Policy and update or revise it as necessary at least once every seven (7) years.
Figure 16 TAC §34.10(g)

§34.20. Attribution of Actions of Employee to License or Permit Holder.

(a) A license or permit holder who claims that the actions of an employee are not attributable to the license or permit holder under Code §106.14(a) must provide to the commission, not later than 10 days after receipt of an administrative notice of violation, an affidavit indicating that the license or permit holder was in compliance with the requirements of Code §106.14(a) at the time of the violation for which the administrative notice was issued. At a hearing in which the license or permit holder claims the benefits of Code §106.14(a), the license or permit holder may be required to present additional evidence to support such claim.

(b) If an employee performs an action described in paragraphs (1) or (2) of this subsection at a time when the employee does not possess a currently valid seller server certificate, then the action of the employee does not meet the requirements of Code §106.14(a)(2) and therefore shall be attributable to the license or permit holder.

(1) The employee sells, serves, dispenses or delivers an alcoholic beverage to:

(A) a person who is not a member of a private club on the club premises;

(B) a minor; or

(C) an intoxicated person.

(2) The employee allows consumption of an alcoholic beverage by:

(A) a person who is not a member of a private club on the club premises;

(B) a minor; or

(C) an intoxicated person.

(c) Proof by the commission that an employee performed an action described in paragraph (1) or (2) of this subsection on three or more occasions within a 12-month period shall create a rebuttable presumption that the license or permit holder has indirectly encouraged a violation of the law within the meaning of Code §106.14(a)(3). The rebuttable presumption is created regardless of whether the employee performing the action described in paragraph (1) or (2) of this subsection on a second or subsequent occasion is the same person.

(1) An employee sold, served, dispensed or delivered an alcoholic beverage to:

(A) a person who is not a member of a private club on the club premises;

(B) a minor; or

(C) an intoxicated person.

(2) An employee allowed consumption of an alcoholic beverage by:

(A) a person who is not a member of a private club on the club premises;

(B) a minor; or

(C) an intoxicated person.

(d) For purposes of satisfying the condition precedent set forth in subsection (c) of this section, proof shall be demonstrated by:

(1) producing final orders issued by the commission or a court of competent jurisdiction finding that the license or permit holder violated Code §§2.02, 11.61(b)(14), 32.17(a)(1), 61.71(a)(6) or 106.13(a) on two past occasions; and

(2) establishing a prima facie case that an employee of the license or permit holder violated Code §§2.02, 11.61(b)(14), 32.17(a)(1), 61.71(a)(6) or 106.13(a) on a third or subsequent occasion.

(e) For purposes of subsection (d) of this section, all incidents offered to satisfy the condition precedent set forth in subsection (c) of this section shall be for the same type of offense and shall have occurred within a 12-month period as calculated from the dates the incidents occurred.

(f) There is a rebuttable presumption that a license or permit holder has indirectly encouraged a violation of the law within the meaning of Code §106.14(a)(3) if the commission presents sufficient proof that a license or permit holder fails to meet any of the standards set forth in paragraphs (1) - (5) of this subsection.

(1) The license or permit holder requires each employee to present a seller server certificate within 30 days of his initial employment date.

(2) The license or permit holder requires each employee to maintain a currently valid seller server certificate.

(3) The license or permit holder adopts written policies and procedures that are designed to prevent, and that affirm a strong commitment by the license or permit holder to prohibit:

(A) the sale, service, dispensation or delivery of an alcoholic beverage to:

(i) a person who is not a member of a private club on the club premises;

(ii) a minor; or

(iii) an intoxicated person; and

(B) the consumption of an alcoholic beverage by:

(i) a person who is not a member of a private club on the club premises;

(ii) a minor; or

(iii) an intoxicated person.

(4) The license or permit holder ensures that all employees have read and understood the license or permit holder's policies and procedures described in paragraph (3) of this subsection.

(5) The license or permit holder maintains records for at least one year after the date employment was terminated that show that each employee read and understood the license or permit holder's current policies and procedures described in paragraph (3) of this subsection.

(g) For purposes of this section, "employee" includes all persons paid by a license or permit holder to sell, serve, dispense, or deliver alcoholic beverages or to immediately manage, direct, supervise or control the sale or service of alcoholic beverages.

(h) At a hearing in which the license or permit holder asserts the affirmative defense established in Code §106.14(a), the commission may present evidence to establish a rebuttable presumption under this section. If the evidence is sufficient to establish a prima facie case, the burden of persuasion in the proceeding shifts to the license or permit holder to show that it has not indirectly encouraged a violation of the law within the meaning of Code §106.14(a)(3).

(i) The rebuttable presumptions authorized in this section are not the exclusive means by which the commission may establish that a license or permit holder has indirectly encouraged a violation of the law within the meaning of Code §106.14(a)(3).

(j) This section applies to contested cases under the Administrative Procedure Act and to complaints or violations referred to the legal division of the commission for resolution.

§34.21. Mandatory Participation in Seller Server Certification.

(a) After notice and an opportunity for hearing, the commission may require by written order that a licensee or permittee require all of its employees to acquire and maintain seller server certification under Chapter 50 of this title, pursuant to Code §106.14. Such requirement may be imposed on a licensee or permittee that has:

(1) violated a provision of the code or rules relating to the sale, service, dispensation or delivery of alcoholic beverages to a minor or intoxicated person more than once in a twelve month period; or

(2) been found, by administrative order or court of competent jurisdiction, to have engaged in conduct directly or indirectly encouraging violations of law within the meaning of Code §106.14(a)(3).

(b) An order issued under this section shall remain in effect until such time as the licensee or permittee has established 24 continuous months of operation from the date of the last violation without violation of a provision of the code or rules relating to the sale, service, dispensation or delivery of alcoholic beverages to a minor or intoxicated person.

(c) A licensee or permittee who wants a hearing prior to the issuance of an order authorized by this section must request the hearing within 10 days of receipt of notice from the commission.

(d) This section applies to contested cases under the Administrative Procedure Act and to complaints or violations referred to the legal division of the commission for resolution.

§34.22. Liability for Actions of Alcohol Delivery Drivers.

(a) These terms, when used in this rule, have the following meanings:

(1) Delivery driver--any person engaged by a consumer delivery permit holder as an alcohol delivery driver including, but not limited to those hired directly, hired indirectly, paid, unpaid, or contracted, whether or not in a supervisory role.

(2) Delivery driver training program--a commission-approved alcohol delivery driver certification program under chapter 50 of this title, established pursuant to Code §57.09.

(b) A delivery driver shall not deliver an alcoholic beverage in violation of Chapter 57 of the Code.

(c) The actions of a delivery driver acting on behalf of a holder of a consumer delivery permit are not attributable to the holder of a consumer delivery permit if the permit holder has not directly or indirectly encouraged the delivery driver to violate the law and the delivery driver:

(1) at the time the delivery occurred, held a valid certification from a delivery driver training program; or

(2) completed the delivery using an alcohol delivery compliance software application that meets the requirements established under Code §57.09.

(d) The holder of a consumer delivery permit may establish a rebuttable presumption that it has not directly or indirectly encouraged the delivery driver to violate Chapter 57 of the Code by providing proof that:

(1) each of the permit holder's delivery drivers engaged by the permit holder during the twenty-four months prior to the violation have actually attended a delivery driver training program and maintained alcohol delivery driver training certification for the entire duration of their engagement by the permit holder as a delivery driver;

(2) prior to the violation, the permit holder adopted written policies and procedures designed to prevent, and that affirm a strong commitment by the permit holder to prohibit violations of Chapter 57 of the Alcoholic Beverage Code; and

(3) all delivery drivers have read and understood such policies and procedures.

(e) The consumer delivery permit holder is not entitled to the rebuttable presumption in subsection (d) of this section if the commission provides proof of violations of Chapter 57 of the Code on two or more prior occasions by any delivery driver making a delivery of alcohol on the permit holder's behalf in the twelve months preceding the

current violation, or on three or more prior occasions by any delivery driver making a delivery of alcohol on the permit holder's behalf in the twenty-four months preceding the current violation.

(f) Criminal Negligence.

(1) Regardless of whether the permit holder has directly or indirectly encouraged the delivery driver to violate Code Chapter 57, the commission or executive director may suspend a consumer delivery permit as prescribed by Code §57.08 if, after notice and hearing, a court or administrative hearing officer finds that a delivery driver made a delivery on the permit holder's behalf with criminal negligence.

(2) It is a rebuttable presumption that delivery of an alcoholic beverage to a minor or an intoxicated person was not made with criminal negligence if the delivery driver:

(A) at the time of the delivery held a valid certification from a delivery driver training program; and

(B) completed the delivery as a result of a technical malfunction of an alcohol delivery compliance software application that otherwise meets the requirements of §50.33 of this title (relating to Alcohol Delivery Compliance Software Applications).

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

Filed with the Office of the Secretary of State on March 23, 2022.

TRD-202201011
Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 206-3451

16 TAC §§34.3 - 34.6

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of 16 TAC §§34.3 - 34.6 as part of a reorganization of its rules.

Background and Summary of Basis for the Proposed Rules

Simultaneously with this proposal for repeals, the commission proposes to adopt a new rule 34.10 to contain the content of current rule 34.3, with amendments. Additionally, the commission proposes to move rules 34.4 - 34.6 to new rules 34.20 - 34.22 to facilitate moving them to a new rule chapter currently under development.

The repeals are proposed pursuant to the commission's general powers and duties under §5.31 of the Code.

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 repeals will be in effect, they are not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeals. The content of the repealed rules is proposed to be simultaneously reincorporated into Chapter 34 in other rules. The proposed repeals will have no impact on agency resources and do not impact other units of state and local government.

Rural Communities Impact Assessment

The proposed repeals will not have any material adverse fiscal or regulatory impacts on rural communities. The repeals apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed repeals will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

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

Takings Impact Assessment

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

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed repeals would be in effect, the public would benefit from the reorganization of Chapter 34 of the commission's rules to make it more logical. 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 repeals. The analysis addresses the first five years the proposed repeals would be in effect. The proposed repeals neither create nor eliminate a government program. The proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeals requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed repeals are not expected to result in a significant change in fees paid to the agency. The proposed repeals are not anticipated to have any material impact on the state's overall economy.

The proposed repeals do not create any new regulations. The proposed repeals have no impact on existing regulations. The proposed repeals have no impact on the number of individuals subject to the rules' applicability.

Comments on the proposed repeals 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. 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 repeals on April 18, 2022, 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.

These repeals are proposed 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 proposed repeals do not impact any other current rules or statutes.

§34.3. Sanctions for Regulatory Violations.

§34.4. Attribution of Actions of Employee to License or Permit Holder.

§34.5. Mandatory Participation in Seller Server Certification.

§34.6. Liability for Actions of Alcohol Delivery Drivers.

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

Filed with the Office of the Secretary of State on March 23, 2022.

TRD-202201001

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

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

CHAPTER 35. ENFORCEMENT

16 TAC §§35.1 - 35.4

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new rules §§35.1-35.4, related to Enforcement.

Background and Summary

The new rules result from review of chapters 35 and 36 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. Proposed §35.1 is based upon current §35.32, regarding breach of the peace. Proposed §35.2 is current §35.50, regarding physical inspection of licensed and permitted premises, without changes. Proposed §35.3 is based upon current §35.51, regarding risk-based inspection of licensed and permitted premises. Proposed §35.4 is based upon current §36.1, relating to possession and sale of firearms on licensed premises. The proposed new rules consolidate current rules for better organization; make an update to reflect modern technology; and make other improvements for clarity. Additionally, new §35.1 would require holders of mixed beverage permits to report to the TABC certain breaches of the peace occurring on property under their control.

Section by Section Discussion

§35.1 Reporting a Breach of the Peace

The commission proposes new §35.1 to contain requirements for license and permit holders to report certain breaches of the peace on the licensed or permitted premises. The proposed new rule is based upon current §35.32, which is proposed to be repealed in a separate, simultaneous rulemaking. In addition to editorial changes and adding the commission's internet-based license and permit management program to reporting options, the proposed new rule differs from current §35.52 by adding a requirement to report a breach of the peace on premises under the control of a mixed beverage permit holder. The rule cites the statutory authority of Alcoholic Beverage Code §28.11; requires holders of mixed beverage permit to report to the commission not only certain breaches of the peace on their permitted premises, but also on premises under their control; and limits administrative liability for a mixed beverage permit holder's failure to report such breaches if the permitted entity was not open to the public at the time of the alleged breach.

§35.2 Physical Inspection of Licensed and Permitted Premises

The commission proposes new §35.2 to contain the content of current §35.50, without change.

§35.3 Risk-based Inspection of Licensed and Permitted Premises

The commission proposes new §35.3 to contain the content of current §35.51, with editorial changes. The proposed rule also reflects a relaxation of the timeline for inspecting premises from mandatory deadlines to a goal, which is necessary due to challenges the agency's enforcement have encountered in meeting the mandatory timeline. The rule further reinforces that the inspection timelines will comply with §35.2, which requires each premises to be inspected at least once every 8 years.

§35.4 Possession and Sale of Firearms on Licensed Premises

The commission proposes new §35.4, which is based upon current §36.1. Moving the sole rule in Chapter 36, Gun Regulation, into Chapter 35, Enforcement, eliminates an unnecessary chapter division. Further, enactment of H.B. 1927, 87th Tex. Leg. (R.S. 2021), also known as The Firearm Carry Act of 2021, required careful review of this rule to ensure its compliance with the Act.

Subsection (c), On-Premises Possession of Firearms, clarifies that it applies only to businesses that derive 51 percent or more of their income from the sale and service of alcoholic beverages for on-premises consumption. It further clarifies that a license or permit holder can possess a firearm on-premises only if it is otherwise lawful for that person to possess a firearm.

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 rules. The proposed 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. The only new requirement is for a mixed beverage permit holder to report to the TABC certain breaches of the peace occurring on property under its control. This will not entail additional cost, as it can be

accomplished for free through many cost-free avenues. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed rules 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

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 clearer, better organized rules related to Enforcement updated to reflect recent legislative changes and the use of new technology. Members of the public will also enjoy the public safety benefits of reporting of certain breaches of the peace on premises under the control of a mixed beverage permit holder, such as a shared parking lot. These reports will assist TABC agents in investigating those breaches of the peace and tracking their frequency of occurrence. 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 or in fees paid to the agency. The proposed rules do not create a new regulation or expand, limit, or repeal an existing regulation. The proposed rules do not impact the number of individuals subject to the rules' applicability. The proposed rules will not affect the economy of the state.

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.* 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 April 18, 2022, 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.

The rules are proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code and Government Code §2001.039, which requires review of each commission rule at least every four years.

Current §§35.32, 35.50, 35.51, and 36.1 are proposed to be repealed simultaneously with the publication of these proposed new rules. The proposed new rules do not otherwise impact any other current rules or statutes.

§35.1. Reporting a Breach of the Peace.

(a) This section relates to Alcoholic Beverage Code §§11.61(b)(21), 28.11, and 61.71(a)(30).

(b) Except as provided in this subsection, a licensee or permittee shall report to the commission a breach of the peace on a licensed premises. Holders of mixed beverage permits shall also report to the commission breaches of the peace on premises under their control. The licensee or permittee shall make the report as soon as possible, but not later than five calendar days after the incident. If the incident is a shooting, stabbing or murder, or an incident involving serious bodily injury, the licensee or permittee shall report the breach of the peace not later than 24 hours from the time of the incident.

(c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

(1) in person at any commission office;

(2) through the commission's website;

(3) by e-mail to breachofpeace@tabc.texas.gov;

(4) by a commission-authorized mobile application; or

(5) through the commission's internet-based license and permit management system.

(d) The executive director or the executive director's designee may require, in writing, that a licensee or permittee make any reports required by this section in a specific manner as instructed, if the licensee or permittee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(30).

(e) At a minimum, the report required by this section shall include the information required in paragraphs (1) - (9) of this subsection, but may include other information the person making the report wishes to include:

(1) the date and time of the report;

(2) the date and time of the incident being reported;

(3) the trade name of the licensed premises where the incident occurred;

(4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;

(5) the name of the person filing the report, that person's relationship to the holder of the license or permit, and contact information for that person;

(6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the license or permit to answer questions from the commission about the incident, that person's relationship to the license or permit holder, and contact information for that person;

(7) a brief description of the incident;

(8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and

(9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section and subject to the provisions of subsection (g) of this section, a reportable "breach of the peace" occurs when law enforcement or emergency medical services personnel respond to the licensed premises or premises under the control of a mixed beverage permit holder, or when a disturbance is created by a person on the licensed premises or on premises under the control of a mixed beverage permit holder and the incident involves:

(1) shooting, stabbing or murdering a person;

(2) causing bodily injury to another person;

(3) threatening another person with a weapon;

(4) discharging a firearm on the licensed premises; or

(5) destroying the licensee's or permittee's property, if the incident is reported by the licensee or permittee to a law enforcement agency.

(g) For purposes of this section:

(1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious bodily injury) creates a "disturbance," and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the licensee or permittee, or any person allowed by the licensee or permittee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;

(2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a "disturbance," and therefore is always a reportable breach of the peace;

(3) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;

(4) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and

(5) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).

(h) A licensee or permittee may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the licensee or permittee can demonstrate that he had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

(i) A mixed beverage permit holder may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the alleged breach of the peace:

(1) did not occur on the permit holder's premises; and

(2) occurred at a time that the permit holder's licensed premises was closed to the public.

§35.2. Physical Inspection of Licensed and Permitted Premises.

(a) This section implements Alcoholic Beverage Code §5.361(a-2)(2).

(b) Notwithstanding §35.3(d) of this title, the commission will physically inspect each in-state licensed or permitted premises at least once every eight (8) years.

§35.3. Risk-Based Inspection of Licensed and Permitted Premises.

(a) This rule implements Alcoholic Beverage Code §5.361(a-1) and (a-2)(1), which require the commission to develop by rule a plan for inspecting permittees and licensees using a risk-based approach that prioritizes public safety.

(b) The commission will classify each licensed or permitted premises as priority or non-priority, for inspection purposes. In classifying a premises, the commission may consider factors including, but not limited to:

(1) the type of license or permit held;

(2) the location of the licensee's or permittee's premises;

(3) previous public safety violations committed by the premises;

(4) any breaches of the peace occurring at the licensee's or permittee's premises;

(5) the licensee's or permittee's record of compliance with the Alcoholic Beverage Code and these rules;

(6) any public safety-related complaints received by the commission against the premises;

(7) whether the premises has regularly completed and submitted the report required by §41.12 of this title, concerning Compliance Reporting by License and Permit Holders; and

(8) whether the premises is a "priority location" for enforcement purposes under subsection (c) of this section.

(c) For purposes of this section, a premises is a "priority location" if:

(1) any public safety-related violations have occurred on the premises during the past six months;

(2) the commission is currently investigating any allegations of public safety violations at the premises;

(3) the premises has been licensed for less than two years for off-premises consumption, and has not been the target of any underage compliance operation or other public safety operation; or

(4) the premises has been licensed for less than two years for on-premises consumption, holds a late hours certificate, and has not been the target of an underage compliance operation or other public safety operation.

(d) It is the commission's goal to inspect a licensed or permitted premises classified as:

(1) priority not less than once every six months; or

(2) non-priority on an as-needed basis, but not less than required by §35.2 of this title.

(e) Inspections under this section may be virtual, physical, or a combination of both.

§35.4. Possession and Sale of Firearms on Licensed Premises.

(a) Gun Shows. A license or permit holder may use or allow a portion of the grounds, buildings, vehicles and appurtenances of the licensed or permitted premises for the use of gun shows if the license or permit holder:

(1) suspends all sales, complimentary offers, and consumption of all alcoholic beverages during the gun show including time required for preparation or set-up and dismantling of the gun show; and

(2) operates its licensed or permitted premises at a facility regularly used for special functions, directly or indirectly, under a lease, concession, or similar agreement from a governmental entity or legally formed and duly recognized civic, religious, charitable, fraternal, or veterans' organization.

(b) Off-Premises Retailers. The holder of a retail dealer's off-premises license, a wine and malt beverage retailer's off-premises permit, a wine only package store permit, or package store permit may allow the sale or offer for sale firearms at the licensed or permitted location if:

(1) alcoholic beverages are not being displayed or sold in any area where firearms are readily accessible or can be viewed; and

(2) the firearms are secure from the general public and are only accessible by employees of the person or entity offering the firearms for sale.

(c) On-Premises Possession of Firearms. Firearms may be possessed on premises licensed for on-premises consumption if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption only if:

(1) the firearm is lawfully in the possession of the permittee/licensee or another person controlling the premises;

(2) the firearm is:

(A) possessed for ceremonial and/or display purposes;

(B) disabled from use as a firearm while on the licensed premises;

(C) is possessed on the licensed premises in connection with charitable fundraising; and

(D) remains in the possession, control or supervision of person or persons acting on behalf of the charitable organization sponsoring the fundraising activity;

(3) firearms are used in a historical reenactment pursuant to §11.61(i) of the Texas Alcoholic Beverage Code and:

(A) the firearms are of the type, caliber, or gauge common to the era and event being reenacted;

(B) such firearms remain in the possession of members of the cast, production company, employees of the permit holder, or others directly involved in the reenactment and are not left unattended or accessible to unauthorized persons at all times such firearms are on the licensed premises;

(C) such firearms remain unloaded at all times while on the licensed premises except that the firearms may be loaded with blank ammunition firing no projectile;

(D) such firearms are handled in a safe manner so as to present no threat of injury to audience members or others because of discharge or other use;

(E) persons engaged in reenactments maintain a minimum of 15 feet intervals between those armed with pistols and all others, and 40 feet between those armed with shotguns and all others;

(F) the permittee adopts safety rules to be employed during the reenactment and such rules are read and signed by all employees of the permit holder involved in the reenactment prior to the beginning of the event; and

(G) the permittee provides the relevant Commission Regional Office notice of the reenactment at least three business days before the event.

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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Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 206-3451

CHAPTER 35. ENFORCEMENT

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of 16 TAC §§35.7, 35.11, 35.21, 35.31, 35.32, 35.41, 35.50, and 35.51 as part of a reorganization of its rules.

Background and Summary of Basis for the Proposed Rules

Simultaneously with this proposal for repeals, the commission proposes to adopt new rules to contain the content of the repealed rules, some with changes. The repeals are proposed pursuant to the commission's general powers and duties under §5.31 of the Code.

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 repeals will be in effect, they are not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeals. The content of the repealed rules is proposed to be simultaneously reincorporated into Chapter 34 and 41 in other rules. The proposed repeals will have no impact on agency resources and do not impact other units of state and local government.

Rural Communities Impact Assessment

The proposed repeals will not have any material adverse fiscal or regulatory impacts on rural communities. The repeals apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed repeals will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

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

Takings Impact Assessment

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

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed repeals would be in effect, the public would benefit from the reorganization of Chapter 34 of the commission's rules to make it more logical. 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 repeals. The analysis addresses the first five years the proposed repeals would be in effect. The proposed repeals neither create nor eliminate a government program. The proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeals requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed repeals are not expected to result in a significant change in fees paid to the agency. The proposed repeals are not anticipated to have any material impact on the state's overall economy.

The proposed repeals do not create any new regulations. The proposed repeals have no impact on existing regulations. The proposed repeals have no impact on the number of individuals subject to the rules' applicability.

Comments on the proposed repeals 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. 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 repeals on April 18, 2022, 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.

SUBCHAPTER A. TRANSPORTATION OF LIQUOR

16 TAC §35.7

These repeals are proposed 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 proposed repeals do not impact any other current rules or statutes.

§35.7. Alcohol Delivery Compliance Software Applications.

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

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SUBCHAPTER B. PROHIBITED EQUIPMENT

16 TAC §35.11

These repeals are proposed 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 proposed repeals do not impact any other current rules or statutes.

§35.11. Bottle Capping Devices.

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. MINORS

16 TAC §35.21

These repeals are proposed 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 proposed repeals do not impact any other current rules or statutes.

§35.21. Assist Defined.

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. PLACE OR MANNER

16 TAC §35.31, §35.32

These repeals are proposed 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 proposed repeals do not impact any other current rules or statutes.

§35.31. Offenses Against the General Welfare.

§35.32. Reporting a Breach of the Peace.

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. DEFINITIONS

16 TAC §35.41

These repeals are proposed 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 proposed repeals do not impact any other current rules or statutes.

§35.41. Terms Defined.

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. INSPECTIONS

16 TAC §35.50, §35.51

These repeals are proposed 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 proposed repeals do not impact any other current rules or statutes.

§35.50. Physical Inspection of Licensed and Permitted Premises.

§35.51. Risk-Based Inspection of Licensed and Permitted Premises.

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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CHAPTER 36. GUN REGULATION

16 TAC §36.1

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of 16 Texas Administrative Code §36.1 as part of a reorganization of its rules.

Background and Summary of Basis for the Proposed Rules

Current rule 36.1, Possession and Sale of Firearms on Licensed Premises, is the sole rule in Chapter 36. The commission proposes to repeal the rule and simultaneously adopt it, with amendments, into Chapter 35. Doing so consolidates the rule with other enforcement rules and eliminates an unnecessary chapter delineation.

The repeal is proposed pursuant to the commission's general powers and duties under §5.31 of the Code.

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 repeal will be in effect, it is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeal. The content of the repealed rule is proposed to be simultaneously reincorporated, with amendments, into Chapter 35 in another rulemaking. The proposed repeal will have no impact on agency resources and does not impact other units of state and local government.

Rural Communities Impact Assessment

The proposed repeal will not have any material adverse fiscal or regulatory impacts on rural communities. The repeal applies statewide and has the same effect in rural communities as in urban communities. Likewise, the proposed repeal will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

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

Takings Impact Assessment

The proposed repeal does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The repeal 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 repeal would be in effect, the public would benefit from the consolidation of Chapters 35 and 36 of the commission's rules to make the rules more logical and concise. 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 repeal. The analysis addresses the first five years the proposed repeal would be in effect. The proposed repeal neither creates nor eliminates a government program. The proposed repeal does not require the creation of new employee positions or the elimination of existing

employee positions. Implementation of the proposed repeal requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed repeal is not expected to result in a significant change in fees paid to the agency. The proposed repeal is not anticipated to have any material impact on the state's overall economy.

The proposed repeal does not create any new regulations. The proposed repeal has no impact on existing regulation. The proposed repeal has no impact on the number of individuals subject to the rule's applicability.

Comments on the proposed repeal 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. 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 repeals on April 18, 2022, 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.

This repeal is proposed 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 proposed repeal does not impact any other current rules or statutes.

§36.1. Possession and Sale of Firearms on Licensed Premises.

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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Shana Horton
Rules Attorney
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CHAPTER 37. LEGAL

SUBCHAPTER B. PENALTIES

16 TAC §37.61

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of 16 TAC §37.61, as part of a reorganization of its rules.

Background and Summary of Basis for the Proposed Rules

Current rule 37.61, Suspensions, is part of Chapter 37, Legal. The commission proposes to repeal the rule and simultaneously adopt it, with amendments, into Chapter 34, Schedule of Sanctions and Penalties. This is a more appropriate, logical placement for the rule because suspension of a license or permit is one of the sanctions the commission uses to enforce the Alcoholic Beverage Code and its rules.

The repeal is proposed pursuant to the commission's general powers and duties under §5.31 of the Code.

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 repeal will be in effect, it is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeal. The content of the repealed rule is proposed to be simultaneously reincorporated, with amendments, into Chapter 34 in another rulemaking. The proposed repeal will have no impact on agency resources and does not impact other units of state and local government.

Rural Communities Impact Assessment

The proposed repeal will not have any material adverse fiscal or regulatory impacts on rural communities. The repeal applies statewide and has the same effect in rural communities as in urban communities. Likewise, the proposed repeal will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

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

Takings Impact Assessment

The proposed repeal does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The repeal 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 repeal would be in effect, the public would benefit from the more logical placement of the rule with other rules related to sanctions and penalties. 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 repeal. The analysis addresses the first five years the proposed repeal would be in effect. The proposed repeal neither creates nor eliminates a government program. The proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeal requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed repeal is not expected to result in a significant change in fees paid to the agency. The proposed repeal is not anticipated to have any material impact on the state's overall economy.

The proposed repeal does not create any new regulations. The proposed repeal has no impact on existing regulation. The pro-

posed repeal has no impact on the number of individuals subject to the rule's applicability.

Comments on the proposed repeal 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. 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 repeals on April 18, 2022, 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.

This repeal is proposed 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 proposed repeal does not impact any other current rules or statutes.

§37.61. Suspensions.

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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CHAPTER 41. AUDITING
SUBCHAPTER B. RECORDKEEPING AND REPORTS

16 TAC §§41.17 - 41.26

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeals of 16 TAC §§41.17 - 41.26 as part of a reorganization of its rules.

Background and Summary of Basis for the Proposed Rules

Current rule §35.11 relates to Bottle Capping Devices. The commission proposes to repeal it from its current location and simultaneously readopt it at §41.17, adjacent to another rule related to devices used for sealing alcoholic beverages. The juxtaposition of the two rules will help users understand the circumstances under which such sealing devices are allowable and when they are prohibited. Inserting the rule in the desired location requires the commission to repeal the remainder of the rules in Chapter 41, Subchapter B. In a separate rulemaking, the commission proposes to simultaneously adopt the rules but shifted down by one rule number.

The repeals are proposed pursuant to the commission's general powers and duties under §5.31 of the Code.

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 repeals will be in effect, they are not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeals. The repealed rules are proposed to be simultaneously readopted with later rule numbers within the subchapter. The proposed repeals will have no impact on agency resources and do not impact other units of state and local government.

Rural Communities Impact Assessment

The proposed repeals will not have any material adverse fiscal or regulatory impacts on rural communities. The repeals apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed repeals will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

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

Takings Impact Assessment

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

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed repeals would be in effect, the public would benefit from the reorganization of Chapter 41 to juxtapose two related rules, helping users understand the circumstances under which alcoholic beverage sealing devices are allowable and when they are prohibited. 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 repeals. The analysis addresses the first five years the proposed repeals would be in effect. The proposed repeals neither create nor eliminate a government program. The proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeals requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed repeals are not expected to result in a significant change in fees paid to the agency. The proposed repeals are not anticipated to have any material impact on the state's overall economy.

The proposed repeals do not create any new regulations. The proposed repeals have no impact on existing regulations. The proposed repeals have no impact on the number of individuals subject to the rules' applicability.

Comments on the proposed repeals 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. 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 repeals on April 18, 2022, 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.

These repeals are proposed 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 proposed repeals do not impact any other current rules or statutes.

§41.17. Vehicle Identification and Liability.

§41.18. Regional Forwarding Centers.

§41.19. Warehouse Registration.

§41.20. Bonded Warehouse Report.

§41.21. Record Requirements: Export.

§41.22. Sale and Delivery of Malt Beverages to Retail Premises and Private Clubs.

§41.23. Providing Retailer Samples: Nonresident Seller.

§41.24. Providing Retailer Samples: Distiller's and Rectifier's Permit.

§41.25. Nonresident Seller's Report.

§41.26. Nonresident Brewer's Report.

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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Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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16 TAC §§41.17 - 41.27

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new rules §§41.17 - 41.27 related to Recordkeeping and Reports.

Background and Summary

In a separate, simultaneous rulemaking, the commission proposes to repeal §35.11 relating to Bottle Capping Devices from its current location and simultaneously readopt it at §41.17, adjacent to §41.16, Tamper-proof Containers, which also relates to devices used for sealing alcoholic beverages. The juxtaposition of the two rules will help users understand the circumstances under which such sealing devices are allowable and when they are prohibited. Inserting the rule in the desired location requires the commission to repeal and re-adopt the remainder of the rules in Chapter 41, Subchapter B, shifted down by one rule number. There are no amendments to the rules.

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, as the rules currently exist in the agency's rules. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed new 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 are identical to rules simultaneously repealed from other rule numbers.

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 reorganization of the rules to juxtapose two related rules, helping users understand the circumstances under which alcoholic beverage sealing devices are allowable and when they are prohibited. 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 or in fees paid to the agency. The proposed rules do not create a new regulation or expand, limit, or repeal an existing regulation. The proposed rules do not impact the number of individuals subject to the rules' applicability. The proposed rules will not affect the economy of the state.

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.* 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 April 18, 2022, 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.

The rules are proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code.

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

§41.17. Bottle Capping Devices.

No member of the retail or wholesale tiers may, for unlawful purposes, possess on the licensed premises a device used for capping or recapping of beverage bottles.

§41.18. Vehicle Identification and Liability.

(a) This rule applies to vehicles used in the alcoholic beverage business by license and permit holders operating under the authority of §§14.071, 19.06, 20.04, 22.08, 24.04, 62.15, or 64.10 of the Alcoholic Beverage Code.

(b) Each vehicle subject to this section shall have the correct TABC license or permit number painted or printed or attached in a conspicuous place on the vehicle, with each character being not less than 1.5 inches in height. These characters shall never be covered from public view when the vehicle is being used in the alcoholic beverage business.

(c) For each vehicle subject to this section, the license or permit holder shall carry at least $500,000 of liability insurance for bodily injury and property damage covering every registered vehicle whose gross weight, registered weight, or gross-weight rating exceeds 26,000 pounds.

(d) For each vehicle subject to this section or operating pursuant to §16.10 of the Alcoholic Beverage Code, the license or permit holder shall file with the commission an affidavit stating that the license or permit holder has knowledge of, and will conduct operations in accordance with, all federal and state safety regulations, and that it is in compliance with the requirements for insurance coverage under this section.

(e) For each vehicle subject to this section, the license or permit holder shall maintain proof of insurance in the licensed or permitted vehicle at all times.

§41.19. Regional Forwarding Centers.

(a) This rule relates to Alcoholic Beverage Code, §§37.01(a)(2), 62.08, and 63.01.

(b) Members of the manufacturing tier transporting alcoholic beverages into the state, or from point to point within the state under the authority of Alcoholic Beverage Code §§37.01(a)(2), 62.08(a), or 63.01, may temporarily hold such alcoholic beverages in a regional forwarding center, subject to the following conditions:

(1) A regional forwarding center is a facility wherein alcoholic beverages may be held under the control of the manufacturing tier member responsible for shipping the alcoholic beverages.

(2) The regional forwarding center may be operated by a third party who acts as the agent of the manufacturing tier member in arranging for interstate or intrastate shipments of alcoholic beverages to licensees and permittees authorized to receive such beverages or for shipment to locations outside the state.

(3) No member of the wholesale or retail tiers of the alcoholic beverage industry may, directly or indirectly, hold any interest in or right of operation of a regional forwarding center.

(4) No alcoholic beverages may be sold to a person or entity from a regional forwarding center. For purposes of this rule, a "sale" occurs when an order is taken and/or payment is made.

(5) No member of the retail tier may take delivery of alcoholic beverages at a regional forwarding center.

(6) A regional forwarding center must be located in an area that is wet for the type of alcoholic beverages held therein.

(7) A licensee or permittee, by using a regional forwarding center under the authority of this rule, consents to inspection of such facility by the commission, its agents or employees, or any peace officer, to the same extent as consent is given for inspection of licensed premises by §101.04 of the Alcoholic Beverage Code.

(c) Licensees and permittees using regional forwarding centers under the authority of this rule shall maintain a record at the regional forwarding center with information relating to specific shipments entered into the record on the day the shipment is received or sent. The record shall show the:

(1) invoice number for each receipt and transfer;

(2) date for each receipt and transfer;

(3) point of origin for each receipt;

(4) destination (name and address) for each transfer;

(5) type of alcoholic beverages and total gallons for each receipt and transfer; and

(6) name of the carrier making delivery and transfer, and its TABC license or permit number if one is required by the Alcoholic Beverage Code.

(d) Licensees and permittees using regional forwarding centers under the authority of this rule shall pay an annual fee to the commission pursuant to §33.23 of this title.

(e) All records required by this section shall be kept for at least two years.

§41.20. Warehouse Registration.

(a) Licensees required by Code §62.08 to register a warehouse with the commission shall provide the warehouse's address and all other information required on a form prescribed by the commission. Should any information required by the form change, a licensee is required to submit a new form reflecting those changes within 30 days. A licensee may not operate a warehouse until the registration form is received by the commission's Licensing Division.

(b) A registered warehouse is a place of business of the license holder for purposes of §41.5 and §41.11 of this title.

§41.21. Bonded Warehouse Report.

(a) Each holder of a bonded warehouse permit shall make a monthly report to the commission on forms prescribed by the executive director.

(b) The report shall:

(1) state the name, address, and permit number of the warehouse;

(2) state the name, address, and permit number of each customer storing liquor;

(3) show monthly opening inventory receipts, withdrawals, and closing inventory in gallons for each class of liquor;

(4) affirm that the permittee is in compliance with Alcoholic Beverage Code §46.03, which requires the holder of a bonded warehouse permit to derive at least 50 percent of its gross revenue in a bona fide manner during each three month period from the storage of goods or merchandise other than liquor; and

(5) be signed by the custodian of the bonded warehouse.

(c) Reports shall be filed with the commission on or before the 15th day of the month following the calendar month for which the report is made.

(d) A holder of a bonded warehouse permit may only store or offer to store liquor in full and unbroken case lots.

(e) Except as provided in this subsection, a holder of a bonded warehouse permit may only allow the withdrawal of liquor in full and unbroken case lots. When actual breakage occurs in a bonded warehouse which results in actual loss, the holder of a bonded warehouse permit may allow withdrawal in partial or broken case lots if the bonded warehouse permit holder executes duplicate affidavits documenting the actual breakage. The bonded warehouse permit holder shall retain one such affidavit on file and submit the other affidavit with the monthly report required by this section.

§41.22. 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.

§41.23. Sale and Delivery of Malt Beverages to Retail Premises and Private Clubs.

(a) Malt beverages intended to be delivered in sales transactions consummated at a licensed retailer's place of business or at a private club located in a wet area may be transported through dry areas in vehicles owned or leased and operated by one of these authorized sellers, who are authorized to sell to retailers or private clubs located in wet areas: the holder of a brewer's self-distribution license; the holder of any type of distributor license; or the holder of a brewpub license. The person directly in charge of the vehicle used in such transportation must possess a written statement furnished and signed by the authorized seller showing the quantity of malt beverages so delivered to such person, the origin thereof, and the fact that said malt beverage is intended for delivery only upon any sale that may be consummated by such person acting as agent for the authorized seller at the place of business of a licensed retail dealer or a private club located in a wet area.

(b) A person into whose charge malt beverages are delivered as provided in this section and who is delivering and obtaining payment for any such malt beverages at a licensed retailer's place of business or at a private club located in a wet area must at that time provide a sales invoice for such malt beverages that must be signed by the purchaser of the malt beverages. The invoice must show the purchaser, the quantity of each type of container sold, and the price. A copy of such invoice shall be furnished to the purchaser at the time of sale, and a copy of the signed sales invoice must be furnished to the authorized seller of such malt beverages within 24 hours from the time of its delivery.

(c) A person into whose charge malt beverages are delivered as provided in this section must possess the signed sales invoices required by subsection (b) of this section for any such malt beverage that is not in the person's possession. Records pertaining to any such shipment must be shown to any representative of the commission or any peace officer upon demand.

§41.24. Providing Retailer Samples: Nonresident Seller.

(a) A holder of a Nonresident Seller's Permit must purchase samples from a package store permit or wholesale permit holder.

(b) Samples purchased by a nonresident seller from a wholesaler's inventory are considered "first sale" for purposes of taxation under Alcoholic Beverage Code §201.03. The wholesaler shall remit excise taxes for samples purchased not later than the 15th day of the month following the month in which occurs the "first sale."

§41.25. Providing Retailer Samples: Distiller's and Rectifier's Permit.

(a) A holder of a Distiller's and Rectifier's Permit may provide samples obtained from the distiller's inventory to a retailer in accordance with Alcoholic Beverage Code §14.07.

(b) Samples taken from the distiller's inventory are considered "first sale" for purposes of taxation under Alcoholic Beverage Code §201.03. The holder of the Distiller's and Rectifier's Permit shall remit excise taxes for samples taken from inventory not later than the 15th day of the month following the month in which occurs the "first sale."

§41.26. Nonresident Seller's Report.

(a) Each holder of a nonresident seller's permit shall make a monthly report to the commission on forms prescribed or approved by the executive director or the 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, permit number, and address of the seller;

(3) trade name, permit number, and shipping address of the purchaser;

(4) brand name, type, number and size of containers, total cases, unit or line item extension price, and total sales price;

(5) origin of shipment and shipping date; and

(6) total by taxable class gallons of each class of liquor.

(d) As long as a nonresident seller's permit remains active, the monthly report required by this section must be filed each month, even if no sales or shipments have been made.

§41.27. Nonresident Brewer's Report.

(a) Each holder of a nonresident brewer's license shall make a monthly report to the commission on forms prescribed or approved by the executive director or the 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 brewer;

(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 or line-item extension price, and total sales price;

(5) origin of shipment and shipping date; and

(6) total gallons of malt beverages invoiced.

(d) As long as a nonresident brewer's license remains active, the monthly report required by this section must be filed each month, even if no sales or shipments have been made.

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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Shana Horton
Rules Attorney
Texas Alcoholic Beverage
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For further information, please call: (512) 206-3451

CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING
SUBCHAPTER F. CONSUMER DELIVERY

16 TAC §50.33

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new rule §50.33, related to Alcohol Delivery Compliance Applications.

Background and Summary

Proposed new rule §50.33 is identical to current rule §35.7, Alcohol Delivery Compliance Software Applications, which is proposed to be simultaneously repealed from its current location. The commission proposes incorporating this rule into Chapter 50 of its rules because the chapter contains other rules related to alcohol delivery.

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 rule will be in effect, it is not expected to have a significant fiscal impact upon the agency. Implementation will be performed using existing agency resources, as the rule is identical to existing 16 TAC §35.7. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed rule. The rule does not impact fees or fines that can be collected by another state or local government nor impose additional regulatory obligations on other units of government.

Rural Communities Impact Assessment

The proposed rule will not have any material adverse fiscal or regulatory impacts on rural communities nor affect a local economy in a material way. The rule is identical to existing 16 TAC §35.7.

Small Business and Micro-Business Assessment/Flexibility Analysis

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

Takings Impact Assessment

The proposed rule does 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 rule would be in effect, the public would benefit from the inclusion of the rule in a more logical, helpful location within the commission's rules, alongside related rules for alcohol delivery. 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 or in fees paid to the agency. The proposed rules do not create a new regulation or expand, limit, or repeal an existing regulation. The proposed rules do not impact the number of individuals subject to the rules' applicability. The proposed rules will not affect the economy of the state.

Comments on the proposed rule 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.* 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 April 18, 2022, 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.

The rule is proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed rule does not impact any other current rules or statutes.

§50.33. Alcohol Delivery Compliance Software Applications.

(a) Definition. In this section, the term "software application" means an alcohol delivery compliance software application.

(b) To qualify for limitations on liability for the actions of its delivery drivers under Alcoholic Beverage Code §57.08 by using a software application, a consumer delivery permit holder must require its drivers to use a software application when delivering alcoholic beverages that meets the minimum requirements of this rule.

(c) The software application must enable the delivery driver to:

(1) access electronically readable data from a government-issued driver's license or identification card;

(2) manually enter the birthdate of the holder of the driver's license or identification card, in the event that the information cannot be read electronically for any reason;

(3) provide an affirmation electronically that at the time of delivery, the person accepting the alcoholic beverage delivery:

(A) does not display signs of intoxication;

(B) presents a valid, unexpired government-issued driver's license or identification card; and

(C) is 21 years of age or older;

(4) cancel the transaction in the event that delivery is not completed;

(5) indicate the reason for any non-delivery of alcoholic beverage(s), which at a minimum must include the options to select:

(A) person receiving the delivery displayed signs of intoxication;

(B) person receiving the delivery failed to present a valid, unexpired government-issued driver's license or identification card demonstrating that the holder is at least 21 years of age; or

(C) unable to complete delivery within a reasonable amount of time after leaving the retailer's premises, which is now closed; and

(6) record the disposition of any undelivered alcohol.

(d) Delivery address verification.

(1) The consumer delivery permit holder is responsible for ensuring the type of alcoholic beverage ordered can legally be delivered to the delivery address (wet/dry status). This may be accomplished automatically, either during the online ordering process or by the software application, or by the delivery driver, using the software application.

(2) If the consumer delivery permit holder's online ordering process or the software application automatically verifies that the type of alcoholic beverage ordered can legally be delivered to the delivery address, the software application must enable the delivery driver to affirm that the delivery address is the same address entered during the online ordering process.

(3) The mechanism or program employed to comply with this section must use, at a minimum, publicly available information provided by the commission regarding the eligibility for sale of each type of alcohol to the delivery address.

(e) In addition to all other requirements of this rule, a software application used in the delivery of alcohol to a consumer pursuant to Alcoholic Beverage Code §28.1001 must enable the delivery driver to affirm that:

(1) the amount of distilled spirits delivered does not exceed 375 milliliters;

(2) all alcoholic beverages are delivered in containers sealed by the manufacturer; and

(3) food was delivered concurrently with the alcoholic beverage(s).

(f) The software application must use industry standard mechanisms to authenticate the identity of each delivery driver using the software application. At a minimum, the software application must use a generally accepted single-factor authentication method to verify the identity of the user, such as a password or biometric identification.

(g) The consumer delivery permit holder must maintain the following information for each transaction and must provide it to the commission upon request:

(1) whether the consumer passed or failed age verification, based on either the reading of the electronically readable data from the driver's license or identification card or manual entry of the birthdate on the driver's license or identification card presented at the time of delivery;

(2) the physical address to which the alcoholic beverage was delivered;

(3) the specific alcoholic beverage(s) or type(s) of alcohol delivered (e.g., malt beverages, wine, and/or distilled spirits);

(4) time stamps for when the order was received, when the delivery driver obtained the alcoholic beverages from the retailer, and when the alcoholic beverages were either delivered to the consumer or the transaction was canceled;

(5) information related to the disposition of undelivered alcoholic beverages; and

(6) the software application compliance features used on the date of the transaction.

(h) The information listed in subsection (g) of this section:

(1) must be stored for at least six months; and

(2) if the information is the subject of an ongoing commission enforcement action, must be stored in the consumer delivery permit holder's usual manner until the enforcement action is closed.

(i) Information from a government-issued driver's license or identification card accessed under this section must be maintained and used in a manner compliant with Alcoholic Beverage Code §109.61.

(j) The consumer delivery permit holder may submit its software application compliance features to the commission for review prior to rollout of the initial version, and at any time the software application compliance features are updated in a manner that may impact its compliance with the requirements of this rule. The commission will provide the permit holder with an opinion as to whether the software application compliance features meet rule requirements or need changes to come into compliance.

(k) The commission may perform periodic audits to verify compliance with this rule.

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

Filed with the Office of the Secretary of State on March 23, 2022.

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Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3451

TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING FOR ENGINEERS

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 133, regarding the licensing of professional engineers, and specifically §133.23, relating to Applications From Former Standard License Holders, and §133.97, relating to Issuance of License. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 133 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act. The proposed rules address the Board's ability to consider previous enforcement actions should a previous license holder reapply for a new license and they implement a new procedure for verifying that licensed professional engineers use a personal seal that is compliant with Board rules.

SECTION-BY-SECTION SUMMARY

The proposed rules amend the title of Chapter 133 from "Licensing" to "Licensing for Engineers." When Chapter 133 was initially adopted, the Board only regulated professional engineers. However, with the combining of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying in 2019, the title of Chapter 133 is being updated to clearly reflect this chapter only applies to engineers.

The proposed rules amend §133.23 to clearly state that the Board may consider previous enforcement actions against a previous license holder who allowed his or her license to expire and become non-renewable if and when that license holder reapplies for a new license.

The proposed rules amend §133.97 eliminating the need for a new license holder to submit a seal imprint and photograph after he or she has become newly licensed. The elimination of this requirement improves efficiency for both the new license holder and the agency. Companion amendments to Chapter 137 establish a new rule stating that the use of a non-compliant seal is a violation of Board rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Michael Sims, P.E., Director of Compliance and Enforcement for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Sims has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules, removing unneeded procedural steps for applicants, and improved efficiency of Board operations.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rule does not expand an existing regulation but does remove the requirement that new licensees submit a copy of their seal to the board.

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

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are 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 §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.301 - 1001.308.

CERTIFICATION OF LEGAL AUTHORITY

The agency certifies the rule has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.23

STATUTORY AUTHORITY

The rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.301 - .308.

§133.23. Applications from Former Standard License Holders.

(a) A former standard license holder, whose original license has been expired for two or more years and who meets the current requirements for licensure, may apply for a new license. This section does not apply to a former holder of a temporary license.

(b) A former standard license holder applying for a license under the current law and rules must have the documentation requested in §133.21 of this chapter (relating to Application) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

(1) submit a new application in a format prescribed by the board;

(2) pay the application fee established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(4) submit a supplementary experience record that includes at least the last four years of engineering experience, which may include experience before the previous license expired;

(5) submit also at least one reference statement conforming to §133.51 of this chapter (relating to Reference Providers), in which a professional engineer shall verify at least four years of the updated supplementary experience record; and

(6) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act, unless previously submitted to the board.

(c) Once an application from a former standard license holder is received, the board will follow the procedures in §133.83 of this chapter (relating to Executive Director Review, Evaluation and Processing of Applications) to review and approve or deny the application.

(d) Any license issued to a former standard license holder shall be assigned a new serial number.

(e) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to Executive Director Review, Evaluation and Processing of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to clarify an application and ensure eligibility pursuant to

§1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

(f) Any enforcement action taken against an expired license holder in accordance with §139.31 of this title (relating to Enforcement Actions for Violations of the Act or Board Rules) and any enforcement action that was pending when a license expired, and has remained expired for two or more years, may be considered in the evaluation of an application for a new license.

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

Filed with the Office of the Secretary of State on March 25, 2022.

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Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 440-7723

SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.97

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.301 - .308.

§133.97. Issuance of License.

(a) A license as a professional engineer shall be issued upon the approval of the application pursuant to §133.87(a) of this chapter (relating to Final Action on Applications).

(b) The new license holder shall be assigned a serial number issued consecutively in the order of approval.

(c) The executive director shall notify the new license holder in writing of:

(1) the license issuance;

(2) the license serial number; and

(3) the instructions to obtain a seal.[; and]

[(4) the instructions to return a seal imprint and a recent, wallet-size, portrait photograph.]

(d) Within 60 days from the written notice from the executive director of license issuance, the new license holder shall obtain a seal(s) that is consistent with the Board authorized-design in §137.31 of this title (relating to Seal Specifications).[:]

[(1) obtain a seal(s);]

[(2) place the seal imprint(s) on the form provided by the board and return it to the board office; and]

[(3) furnish a wallet-size portrait photograph for the board's files.]

(e) Failure to comply with paragraph (d) of this section is a violation of board rules and shall be subject to sanctions.

(f) The printed license shall bear the signature of the chair and the secretary of the board, bear the seal of the board, and bear the full name and license number of the license holder.

(g) The printed license shall be uniform and of a design approved by the board. Any new designs for a printed license shall be made available to all license holders upon request.

(h) A license issued by the board is as a professional engineer, regardless of branch designations or specialty practices. Practice is restricted only by the license holder's professional judgment and applicable board rules regarding professional practice and ethics.

(i) The records of the board shall indicate a branch of engineering considered by the board or license holder to be a primary area of competency. A license holder shall indicate a branch of engineering by providing:

(1) a transcript showing a degree in the branch of engineering;

(2) a supplementary experience record documenting at least 4 years of experience in the branch of engineering and verified by at least one PE reference provider that has personal knowledge of the license holder's character, reputation, suitability for licensure, and engineering experience; or

(3) verification of successful passage of the examination on the principles and practice of engineering in the branch of engineering.

(j) A license holder may request that the board change the primary area of competency or indicate additional areas of competency by providing one or more of the items listed in paragraphs (1) - (3) of this subsection:

(1) a transcript showing an additional degree in the new branch other than the degree used for initial licensure;

(2) a supplementary experience record documenting at least 4 years of experience in the new branch verified by at least one PE reference provider who has documented competence in the engineering discipline being added that has personal knowledge of the license holder's character, reputation, suitability for licensure, and engineering experience; or

(3) verification of successful passage of the examination on the principles and practice of engineering in the new branch.

(k) All requests relating to branch listings for areas of competency require the review and approval of the executive director or the executive director's designee.

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

Filed with the Office of the Secretary of State on March 25, 2022.

TRD-202201055

Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 440-7723

CHAPTER 134. LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 134, regarding the licensing of registered professional land surveyors, specifically §134.23, relating to Applications From Standard Registration Holders, and §134.97, relating to Issuance of Registration. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 134 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act and Texas Occupations Code Chapter 1071, the Professional Land Surveying Practices Act. The proposed rules address the Board's ability to consider previous enforcement actions should a previous registration holder reapply for a new registration and they implement a new procedure for verifying that registered professional land surveyors use a personal seal that is compliant with Board rules.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §134.23 to clearly state that the Board may consider previous enforcement actions against a previous registration holder who allowed his or her registration to expire and become non-renewable if and when that registration holder reapplies for a new registration. In addition the title of §134.23 is being amended to make clear this rule applies to former registration holders.

The proposed rules amend §134.97 eliminating the need for a new registration holder to submit a seal imprint and photograph after he or she has become newly registered. The elimination of this requirement improves efficiency for both the new registration holder and the agency. Companion amendments to Chapter 138 establish a new rule stating that the use of a non-compliant seal is a violation of Board rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Michael Sims, P.E., Director of Compliance and Enforcement for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Sims has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules, removing unneeded procedural steps for applicants, and improved efficiency of Board operations.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rule does not expand an existing regulation but does remove the requirement that new licensees submit a copy of their seal to the board.

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

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do

not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are 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 §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

CERTIFICATION OF LEGAL AUTHORITY

The agency certifies the rule has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

SUBCHAPTER C. LAND SURVEYOR APPLICATION REQUIREMENTS

22 TAC §134.23

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1071.251 - .262.

§134.23. Application from Former Standard Registration Holders.

(a) A former standard registration holder, whose original license has been expired for two or more years and who meets the current requirements for licensure, may apply for a new registration.

(b) A former standard registration holder applying for a registration under the current law and rules must have the documentation requested in §134.21 of this chapter (relating to Application for Standard Registration) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

(1) submit a new application in a format prescribed by the board;

(2) pay the application fee established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) submit an updated supplementary experience record that includes at least the last two years of surveying experience, which may include experience before the previous license expired;

(4) submit a minimum of three reference statements conforming to Subchapter F of this chapter (relating to Reference Documentation), in which a registered professional land surveyor shall verify at least two years of the updated supplementary experience record; and

(5) for [~~For~~] applications submitted on or after September 1, 2020, documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act, unless previously submitted to the board.

(c) Once an application from a former standard registration holder is received, the board will follow the procedures in §134.83 of this chapter (relating to Executive Director Review, Evaluation and Processing of Applications) to review and approve or deny the application.

(d) Any license registration issued to a former standard registration holder shall be assigned a new serial number.

(e) Once an application under this section is accepted for review, the board will follow the procedures in §134.83 of this chapter to review and approve or deny the application. The board may request additional information or require additional documentation to clarify an application and ensure eligibility as needed. Pursuant to Texas Occupations Code §1001.453, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

(f) Any enforcement action taken against an expired registration or license holder in accordance with §139.31 (relating to Enforcement Actions for Violations of the Act or Board Rules) or pending enforcement action at which time the registration or license became expired for two or more years may be considered in the evaluation of an application for a new registration or license.

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

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Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND REGISTRATION ISSUANCE

22 TAC §134.97

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the

Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1071.251 - .262.

§134.97. Issuance of Registration.

(a) A registration as a registered professional land surveyor shall be issued upon the approval of the application pursuant to §134.87(a) of this chapter (relating to Final Action on Applications).

(b) The new registration holder shall be assigned a serial number issued consecutively in the order of approval.

(c) The executive director shall notify the new registration holder in writing of:

(1) the registration issuance;

(2) the registration serial number; and

(3) the instructions to obtain a seal.[~~; and~~]

[~~(4) the instructions to return a seal imprint and a recent, wallet-size, portrait photograph.~~]

(d) Within 60 days from the written notice from the executive director of registration issuance, the new registration holder shall obtain a seal(s) that is consistent with the Board authorized-design in §138.31 of this title (relating to Seal Specifications).[~~:~~]

[~~(1) obtain a seal(s);~~]

[~~(2) place the seal imprint(s) on the form provided by the board and return it to the board office; and~~]

[~~(3) furnish a wallet-size portrait photograph for the board's files.~~]

(e) Failure to comply with subsection (d) of this section is a violation of board rules and shall be subject to sanctions.

(f) The printed registration certificate shall bear the signature of the chair and the secretary of the board, bear the seal of the board, and bear the full name and registration number of the registration holder.

(g) The printed registration certificate shall be uniform and of a design approved by the board. Any new designs for a printed registration certificate shall be made available to all registration holders 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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Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-7723

CHAPTER 135. ENGINEERING FIRM REGISTRATION

22 TAC §135.3

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 135, regarding the registration of engineering firms, and specifically §135.3, relating to Applications for a Certificate of Registration. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 135 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act. The proposed rules address the information the Board gathers from new applicants for an engineering firm registration, and they also clarify that governmental entities are not subject to the firm registration rules.

SECTION-BY-SECTION SUMMARY

The proposed rules amend the title of Chapter 135 from "Firm Registration" to "Engineering Firm Registration." When Chapter 135 was initially adopted, the Board only regulated professional engineers and engineering firms. However, with the combining of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying in 2019, the title of Chapter 135 is being updated to clearly reflect this chapter only applies to engineering firms.

The proposed rules amend §135.3 to clearly state the information the Board requests from an applicant for a new engineering firm registration. The proposed rules also mirror language from the Texas Engineering Practice Act that exclude a governmental entity from the firm registration requirements in Chapter 135.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Michael Sims, P.E., Director of Compliance and Enforcement for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Sims has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules, removing unneeded procedural steps for applicants, and improved efficiency of Board operations.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the

proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rule does not expand an existing regulation.

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

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are 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 §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §1001.405.

§135.3. Application for a Certificate of Registration.

(a) The board may issue a certificate of registration only to applicant firms that have [~~having~~] submitted sufficient information to meet the requirements set forth in §1001.405 of the Act and this section.

(b) The authorized official of the firm shall complete the form furnished by the board including but not limited to the following information listed in paragraphs (1) - (7) of this subsection:

(1) the name, address, and communication number of the firm offering to engage or engaging in the practice of professional engineering for the public in Texas;

(2) the name, position, address, and telephone [~~communication~~] numbers of each officer or director;

(3) the name, address, and current active Texas professional engineer license number of each engineer employee performing engineering for the public in Texas on behalf of the firm;

(4) the name, location, telephone [~~and communication~~] numbers and the name of the engineer in responsible charge of the professional engineering work for projects in Texas of each subsidiary or branch office offering to engage or engaging in the practice of professional engineering for the public in Texas, if any;

(5) the federal employer identification number (EIN) for the firm (unless the firm is a sole practitioner);

(6) a signed statement attesting to the correctness and completeness of the application; and

(7) a registration fee as established by the board.

(c) The application fee will not be refunded.

(d) In accordance with §1001.405(a) of the Engineering Act, a governmental entity, as defined in Government Code §2254.002(1), including a state agency as defined in Government Code §2052.002(e), is not subject to the firm registration requirements of this chapter.

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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Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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CHAPTER 136. SURVEYING FIRM REGISTRATION

22 TAC §136.3

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 136, regarding the registration of surveying firms, and specifically §136.3, relating to Applications for a Certificate of Registration. These proposed changes are referred to as proposed rules.

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 136 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act and Texas Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act. The proposed rules address the information the Board gathers from new applicants for a surveying firm registration and they also clarify that governmental entities are not subject to the firm registration rules.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §136.3 to clearly state the information the Board requests from an applicant for a new surveying firm registration. The proposed rules also reiterate language from the Professional Land Surveying Practices Act that does not include a governmental entity among the entities that must register as a surveying firm.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Michael Sims, P.E., Director of Compliance and Enforcement for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Sims has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules and improved efficiency of Board operations.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rule does not expand an existing regulation.

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

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or

reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are 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 §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §1071.352.

§136.3. Application for a Certificate of Registration.

(a) The board may issue a firm registration only to applicant firms that have [having] submitted information to meet the requirements set forth in §1071.352 of the Surveying Act and this section.

(b) The authorized official of the firm shall complete the form furnished by the board including, but not limited to, the following information listed in paragraphs (1) - (7) of this subsection:

(1) the name, address, and telephone number of the firm offering to engage or engaging in the practice of professional land surveying for the public in Texas;

(2) the name, position, address, and telephone numbers of each officer or director;

(3) the name, address, and current active Texas registered professional land surveyor registration number of each land surveyor employee performing land surveying for the public in Texas on behalf of the firm;

(4) the name, location, [and] telephone numbers and the name of the surveyor in responsible charge of the professional surveying work for projects in Texas of each subsidiary or branch office offering to engage or engaging in the practice of professional surveying for the public in Texas, if any;

(5) the federal employer identification number (EIN) for the firm;

(6) a signed statement attesting to the correctness and completeness of the application; and

(7) a registration fee as established by the board.

(c) The application fee will not be refunded.

(d) In accordance with §1071.351(a) of the Surveying Act, a governmental entity, as defined in Government Code §2254.002(1), including a state agency, as defined in Government Code §2052.002(e), is not subject to the firm registration requirements of this chapter.

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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Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM FOR ENGINEERS

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 137, regarding Compliance and Professionalism for engineers, and specifically §137.1, relating to License Holder Designations, new §137.12 relating to Suspended Licenses, §137.14 relating to Voluntary Surrender of License, §137.17 relating to Continuing Education Program, §137.31 relating to Seal Specifications, §137.33 relating to Sealing Procedures, §137.37 relating to Sealing Misconduct, §137.55 relating to Engineers Shall Protect the Public, §137.57, relating to Engineers Shall Be Objective and Truthful, and §137.77, relating to Firm Registration Compliance. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 137 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act. The proposed rules address the offering or practicing of engineering while one's license is suspended, the voluntary surrender of a license, the sealing of engineering work product, and the professional standards expected of licensed professional engineers. In addition, the proposed rules clarify existing rules and modify rule language to be consistent with language found in the Texas Engineering Practice Act.

SECTION-BY-SECTION SUMMARY

The proposed rules amend the title of Chapter 137 from "Compliance and Professionalism" to "Compliance and Professionalism for Engineers." When Chapter 137 was initially adopted, the Board only regulated professional engineers. However, with the combining of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying in 2019, the title of Chapter 137 is being updated to clearly reflect this chapter only applies to engineers.

The proposed rules amend §137.1 to update existing rule language to be consistent with language found in the Texas Occupations Code, §1001.301.

The proposed rules add new §137.12 to adopt provisions to clearly state that a professional engineer cannot offer or perform engineering services while his or her license is suspended.

The proposed rules amend §137.14 to allow an engineer to voluntarily surrender his or her license to resolve a pending enforcement case if the case alleges violation of Board rules related to notification or continuing education issues.

The proposed rules amend §137.17 to clarify existing rules for continuing education requirements for engineers. In addition, the title of this rule is being amended from "Continuing Education Program" to "Continuing Education" to mirror the title of a similar rule found in Chapter 138.

The proposed rules amend §137.31 to eliminate the need for a newly licensed engineer to submit a seal impression to the Board within sixty days of being licensed. The proposed rules compliment the proposed rule amendments to §133.23.

The proposed rules amend §137.33 updates an incorrect rule reference and establishes a requirement that the use of a non-compliant engineer's seal is a violation of Board rules.

The proposed rules amend §137.37 to clearly state that the use of fraudulent engineering seal is a violation of Board rules.

The proposed rules amend §137.55 to eliminate an existing rule that is unenforceable in its current form and also redundant with the existing requirements in §137.63(b)(1).

The proposed rules amend §137.57 to update the language in the rule to be more enforceable.

The proposed rules amend §137.77 to make clear that while a professional engineer must work for a firm in order for it to be eligible to become a registered engineering firm, that specific engineer does not have to supervise all engineering work done by the firm, only that an engineer supervise all engineering work done by the firm.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Michael Sims, P.E., Director of Compliance and Enforcement for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Sims has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules and improved efficiency of Board operations.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

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

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

5. The proposed rules create a new regulation by shifting the way the Board enforces the use of an engineer's seal.

6. The proposed rule does not expand an existing regulation but does remove the requirement that new licensees submit a copy of their seal to the board.

7. The proposed rules do not increase the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are 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 §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §§137.1, 137.12, 137.14, 137.17

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.351 and 1001.401 - .407.

§137.1. License Holder Designations.

(a) Pursuant to §1001.301 of the Act, a license holder may use the following terms when representing himself or herself to the public:

(1) "engineer",

(2) "professional engineer",

(3) "licensed engineer",

(4) "registered engineer",

(5) "licensed professional engineer",

(6) "registered professional engineer", [~~or~~]

(7) "engineered", or

(8) [~~(7)~~] any variation or abbreviation [~~combination~~] of [~~words with or variation of~~] the terms listed in paragraphs (1) - (7) [~~(1)~~ - ~~(6)~~] of this subsection.

(b) Certificates, seals, and other official documentation showing earlier terminology shall be considered valid for all purposes.

(c) License holders who have placed their license in an inactive status pursuant to §137.13 of this chapter (relating to Inactive Status) may use the terms in subsection (a) [~~§137.1(a)~~] of this section but must include the term "inactive" or "retired" in conjunction with the designation.

§137.12. Suspended License.

Offering or performing engineering services to the public while a license is suspended is a violation of board rules and is subject to disciplinary action by the board.

§137.14. Voluntary Surrender of License.

(a) A license holder who does not wish to maintain a license, the legal guardian of the license holder, or other legal representative of the license holder may voluntarily surrender the license by submitting a request in writing provided that the license holder:

(1) is in good standing, and

(2) does not have an enforcement case pending before the board, other than cases alleging a violation of §137.5 (relating to License Holder Notification Requirements) and §137.17 (relating to Continuing Education) of this title.

(b) A license that has been voluntarily surrendered may not be renewed. A license holder who has voluntarily surrendered a license may apply for a new license.

§137.17. Continuing Education [~~Program~~].

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in ABET-approved program or other related college course.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(5) Self-directed study--Time spent engaging in professional development that is not otherwise identified in this rule. (Examples include, but are not limited to: reading/reviewing trade magazines or books, watching tutorials, and viewing other online content.)

(c) Every license holder is required to obtain 15 PDH units during the renewal period year.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of professional engineering, or review of the Texas Engineering Practice Act and Board Rules. PDH units carried forward may not be counted to meet the professional ethics requirement.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 14 PDH units may be carried forward into the subsequent renewal period. Professional Development Hours must not be anticipated and cannot be used for more than one renewal period.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) through (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, through [including]:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization; or

(C) Serving in other official positions.

(8) Patents issued.

(9) Engaging in self-directed study.

(10) Active participation in educational outreach activities, including activities that build awareness or skills regarding engineering, that involve [involving] K-12 or higher education students.

(11) A passing score on the NCEES Principles and Practice of Engineering examination in accordance with §133.73 of this title (relating to Examination Results and Analysis).

(g) To receive PDH units, all [All] activities described in subsection (f) of this section must [shall] be relevant to the practice of engineering [a technical profession] and may include educational, technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed study--1 PDH (Not to exceed 5 PDH).

(6) Each published paper, article, or book--10 PDH.

(7) Active participation in professional or technical society, association, agency, or organization--1 PDH (Not to exceed 5 PDH per organization).

(8) Active participation in educational outreach activities--1 PDH (Not to exceed 3 PDH).

(9) Each patent issued--15 PDH.

(10) Other activities shall be credited at 1 PDH for each hour of participation in the activity.

(11) A passing score on the NCEES Principles and Practice of Engineering examination in accordance with §133.73 of this title - 14 PDH.

(i) Determination of Credit.

(1) The board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The board shall not pre-approve or endorse any CEP activities. It is the responsibility of each license holder to assure that all PDH credits claimed meet CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed study will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed study is the responsibility of the license holder and subject to review as required by the board.

(6) Credit determination for activities described in subsection (h)(4) of this section is the responsibility of the license holder and subject to review as required by the board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or serve in other official positions. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit is valid for teaching a course or seminar for the first time only.

(j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

(k) The license holder must certify that CEP requirements have been satisfied for that renewal year with the renewal application and fee.

(l) CEP records for each license holder must be maintained for a period of three years by the license holder.

(m) CEP records for each license holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the board or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of engineering; the board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New license holders shall be exempt for their first renewal period if the NCEES Principles and Practice of Engineering exam was taken within 12 months [1 calendar year] of the license issuance date.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) License holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4) License holders who list their status as "Inactive" and who further certify that they are not providing professional engineering services in Texas shall be exempt from the professional development hours required.

(5) Exemptions must be claimed at the time of renewal.

(o) A license holder may bring an inactive license to active status by obtaining all delinquent PDH units and submitting copies of CEP records demonstrating compliance to the board or its authorized representative for verification purposes. If the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required, and hours acquired must be within the two years prior to reactivation.

(p) Noncompliance:

(1) If a license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) Failure to comply with CEP reporting requirements as listed in this section is a violation of board rules and shall be subject to sanctions.

(3) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

(4) If found to be noncompliant, the board may require additional audits of the license holder.

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

Filed with the Office of the Secretary of State on March 25, 2022.

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Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §§137.31, 137.33, 137.37

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.351 and 1001.401 - .407.

§137.31. Seal Specifications.

(a) Upon issuance of a license, each license holder is required to obtain a seal under the requirements of §133.97 of this title (relating to Issuance of License) [~~and submit an impression of the seal or an electronic seal, and an original or an electronic signature to the board for board records~~].

(b) In accordance with §1001.401(a) of the Engineering Act, physical [~~Physical~~] and electronic seals shall be of the Board-authorized design illustrated in this section and shall be no larger than two inches in diameter. Regardless of seal size the engineer's name and number must be clearly legible.

(c) All physical seals obtained and used by license holders shall be capable of leaving a permanent ink image or permanent impression of the seal attached to the engineering work.
Figure: 22 TAC §137.31(c) (No change.)

(d) All seals obtained and used by license holders shall contain any given name, commonly accepted variation of the given name, or initial combination with the surname as currently listed with the board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination. The name can be displayed on the seal using all uppercase letters such as "LESLIE H. DOE" or using the standard combination of upper and lowercase letters, such as "Leslie H. Doe". If after licensure, a license holder legally changes his/her name, the license holder must have a new seal or seals made showing the new legal name [~~and submit an imprint or imprints of the new seal(s) to the board for review, approval, and processing (submitted within 60 days of name change)~~].

(e) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas is prohibited.

(f) When signing an engineering work, the engineer may utilize the designation "P.E." [~~"P.E"~~] or other terms as described in §137.1 of this chapter (relating to License Holder Designations).

(g) This section does not prevent the reproduction of sealed and signed, original works for distribution.

§137.33. Sealing Procedures.

(a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed or directly supervised by the professional engineer named and to delineate the scope of the engineer's work.

(b) License holders shall only seal work done by them, performed under their direct supervision as defined in §131.2 [~~§131.81~~] of this title, relating to Definitions, or shall be standards or general guideline specifications that they have reviewed and selected. Upon sealing, engineers take full professional responsibility for that work.

(c) When a license holder reviews and elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

(1) individually sealed by the license holder; or

(2) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing its use.

(d) License holders shall take reasonable steps to ensure the security of their physical or electronic seals and electronic signatures. For electronic seals and electronic signatures, the engineer must have reasonable security measures in place to protect these files. In the event of loss of a seal or electronic signature, the engineer will, as soon as possible, but within 30 days of discovery, give written notification of the facts concerning the loss to board.

(e) Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date by placing the following text or similar wording on the title sheet of bound engineering reports, specifications, details, calculations or estimates, and each sheet of plans or drawings regardless of size or

binding, instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(f) License holders shall affix their seal and original signature or electronic seal and signature with the date on the final version of their engineering work before such work is released from their control.

(1) The signature and date shall not obscure the engineer's name or license number in the seal.

(2) Engineering work required to bear a seal and signature includes the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding.

(3) All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations). A seal may be added on such work if required or at the engineer's discretion.

(g) Work performed by more than one license holder shall be sealed in a manner such that all engineering can be clearly attributed to the responsible license holder or license holders. When sealing plans or documents on which two or more license holders have worked, the seal and signature of each license holder shall be placed on the plan or document with a notation describing the work done under each license holder's responsible charge.

(h) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(i) A license holder, as a third party, may alter, complete, correct, revise, or add to the work of another license holder when engaged to do so by a client, provided:

(1) the first license holder is notified in writing by the second license holder of the engagement immediately upon acceptance of the engagement; and

(2) any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second license holder. The second license holder then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original license holder's design.

(j) A local authority may require an original seal and/or signature on reproduced documents.

(k) A plan, specification, plat, or report issued by a license holder for a project to be constructed or used in this state must include the license holder's seal placed on the document. A license holder is not required to use a seal if the project is to be constructed or used in another state or country.

(l) An engineer may securely transmit his or her final version of engineering work electronically provided that work bears the engineer's seal and uses one of the techniques described in §137.35(a) of this chapter (relating to Electronic Seals and Electronic Signatures) and must employ reasonable security measures to make the documents unalterable. Electronic correspondence of this type may be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms described in §137.1 of this chapter [~~(relating to License Holder Designations)~~].

(m) A license holder is not required to use a seal for a project for which the license holder is not required to hold a license under an exemption set forth under the Act, Texas Occupation Code §§1001.051 - 1001.066.

(n) All engineering documents released, issued, or submitted by a licensee, including preliminary documents, shall clearly indicate the firm name and registration number of the engineering firm by which the engineer is employed.

(1) If the engineer is employed by a local, State, or Federal Government agency, then only the name of the agency shall be required.

(2) If the engineer is exempt from sealing a document under subsection (m) of this section, but elects to seal a document, then only the name of the employer shall be required.

(o) Use of a seal that is not in compliance with the requirements of §137.31 of this title (relating to Seal Specifications) by a license holder is a violation of Board rules and subject to sanctions.

§137.37. Sealing Misconduct.

(a) A license holder is guilty of misconduct and subject to disciplinary action if the license holder:

(1) knowingly signs or seals any engineering document or product if its use or implementation may endanger the health, safety, property or welfare of the public.

(2) signs or affixes a seal on any document or product when the license is inactive or has been revoked, suspended, or has expired.

(3) alters a sealed document without proper notification to the responsible license holder.

(4) allows others access to his or her electronic files containing his or her seal and/or electronic signature, unless access is explicitly authorized for particular engineering work.

(b) A person not licensed by the board shall not use, cause to be used, affix, or cause to be affixed or in any other manner, regardless of the means, attach or in any way depict an engineering seal or a representation of an engineering seal without the express permission of the currently active licensee.

(c) A person shall not use, cause to be used, affix, cause to be affixed, or in any other manner, regardless of the means, attach or in any way depict a fraudulent engineering seal or a fraudulent representation of an engineering seal.

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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Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-7723

SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.55, §137.57

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.351 and 1001.401 - .407.

§137.55. Engineers Shall Protect the Public.

(a) Engineers shall be entrusted to protect the health, safety, property, and welfare of the public in the practice of their profession. The public as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with the engineering work of the license holder.

(b) Engineers shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public. Any act or conduct which constitutes incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be censurable by the board.

(c) Engineers shall first notify involved parties of any engineering decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an engineer's judgment, any risk to the public remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities.

[~~(d) Engineers should strive to adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions.~~]

§137.57. Engineers Shall Be Objective and Truthful.

(a) Engineers shall issue statements only in an objective and truthful manner. The issuance of oral or written assertions in the practice of engineering shall not be:

(1) fraudulent;

(2) deceitful; or

(3) misleading or shall not in any manner whatsoever tend to create a misleading impression.

(b) Engineers shall [~~should strive to~~] make affected parties aware of the engineers' professional concerns regarding particular actions or projects, and of the consequences of engineering decisions or judgments that are overruled or disregarded.

(c) The engineer shall disclose a potential conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A potential conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a potential conflict of interest employment shall maintain the interests of the client and other parties as provided by §137.61 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.

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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Lance Kinney, Ph.D., P.E.
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SUBCHAPTER D. FIRM AND GOVERNMENTAL ENTITY COMPLIANCE

22 TAC §137.77

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.351 and 1001.401 - .407.

§137.77. Firm Registration Compliance.

(a) Any firm or other business entity shall not offer or perform engineering services to the public unless registered with the board pursuant to the requirements of Chapter 135 of this title (relating to Firm Registration).

(b) A firm shall provide that at least one full-time active license holder is employed with the entity and that an [~~the~~] active license holder performs or directly supervises all engineering work and activities that require a license that is performed in the primary, branch, remote, or project office(s).

(c) An active license holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.

(d) No engineering services are to be offered to or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.

(e) A business entity that offers or is engaged in the practice of engineering in Texas and is not registered with the board or has previously been registered with the board and whose registration has expired shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in §§1001.501 -

1001.508 of the Act and §139.35 of this title (relating to Sanctions and Penalties).

(f) The board may revoke a certificate of registration that was obtained in violation of the Act and/or board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional engineer for the firm.

(g) If a firm has notified the board that it is no longer offering or performing engineer services to the public, including the absence of a regular, full-time employee who is an active professional engineer licensed in Texas, the certificate of registration record will be placed in inactive status until the board is notified of resumed offering and services. If firm certificate of registration is inactive, the certificate of registration will expire under the same requirements of subsection (e) of this section unless renewed.

(h) All engineering documents released, issued, or submitted by or for a registered engineering firm, including preliminary documents, must clearly indicate the firm name and registration number.

(i) A firm registered under Chapter 135 of this title may voluntarily surrender the registration by submitting a request in writing provided that the firm:

(1) is in good standing; and

(2) does not have an enforcement case pending before the board.

(j) A firm registration that has been voluntarily surrendered may not be renewed. A firm which has voluntarily surrendered a registration may apply for a new registration.

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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Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-7723

CHAPTER 138. COMPLIANCE AND PROFESSIONALISM FOR SURVEYORS

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 138, regarding Compliance and Professionalism for Surveyors, and specifically §138.1, relating to License Holder Designations, §138.5 relating to Notification of Name Change, Address Change, Employer Change and Criminal Convictions, new §138.12 relating to Suspended License or Registration, §138.14 relating to Voluntary Surrender of License or Registration, §138.17 relating to Continuing Education, §138.31 relating to Seal Specifications, §138.33 relating to Sealing Procedures, §138.37 relating to Sealing Misconduct, §138.57, relating to Surveyors Shall Be Objective and Truthful, and §138.61 relating to Surveyors Shall Maintain the Confidentiality of Clients. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 138 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act and Texas Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act. The proposed rules address the offering or practicing of surveying while one's registration or license is suspended, the voluntary surrender of a registration or license, the sealing of surveying work product, and the professional standards expected of registered or licensed surveyors. In addition, the proposed rules clarify existing rules and modify rule language to be consistent with language found in the Professional Land Surveying Practices Act.

SECTION-BY-SECTION SUMMARY

The proposed rules amend the title of §138.1 from "License Holder Designations" to "Registration Holder Designations." The proposed rules also update existing rule language to be consistent with language found in the Texas Occupations Code, §1071.251.

The proposed rules amend the title of §138.5 from "Notification of Name Change, Address Change, Employer Change, and Criminal Convictions" to "Registration and License Holder Notification Requirements."

The proposed rules add new §138.12 to adopt provisions to clearly state that a professional land surveyor cannot offer or perform surveying services while his or her registration or license is suspended.

The proposed rules amend §138.14 to allow a surveyor to voluntarily surrender his or her license or registration to resolve a pending enforcement case if the case alleges violation of Board rules related to notification or continuing education issues.

The proposed rules amend §138.17 to clarify existing rules for continuing education requirements for surveyors.

The proposed rules amend §138.31 to eliminate the need for a newly registered surveyor to submit a seal impression to the Board within sixty days of being registered. The proposed rules compliment the proposed rule amendments to §134.23.

The proposed rules amend §138.33 establishes a requirement that the use of a non-compliant surveyor's seal is a violation of Board rules.

The proposed rules amend §138.37 to clearly state that the use of fraudulent surveyor's seal is a violation of Board rules.

The proposed rules amend §138.57 to update the language in the rule to be more enforceable.

The proposed rules amend §138.61 to correct an inadvertent reference to an "engineer" to "surveyor."

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Michael Sims, P.E., Director of Compliance and Enforcement for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Sims has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules and improved efficiency of Board operations.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

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

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

5. The proposed rules create a new regulation by shifting the way the Board enforces the use of a surveyor's seal.

6. The proposed rule does not expand an existing regulation but does remove the requirement that new registrants submit a copy of their seal to the board.

7. The proposed rules do not increase the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are 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 §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

SUBCHAPTER A. INDIVIDUAL AND SURVEYOR COMPLIANCE

22 TAC §§138.1, 138.5, 138.12, 138.14, 138.17

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1071.301, 1071.305, 1071.351 - .361.

§138.1. Registration [~~License~~] Holder Designations.

(a) Pursuant to §1071.002 and §1071.251 of the Surveying Act, a Registered Professional Land Surveyor may use the following terms when representing himself or herself to the public:

(1) "registered professional land surveyor";

(2) "registered land surveyor";

(3) "registered surveyor";

(4) "professional land surveyor";

(5) "professional surveyor"; or

(6) any variation or abbreviation [~~combination of words with or variation~~] of the terms listed in paragraphs (1) - (5) of this subsection.

(b) Pursuant to §1071.002 and §1071.251 of the Surveying Act, a Licensed State Land Surveyor may use the following terms when representing himself or herself to the public:

(1) "licensed state land surveyor"; or

(2) "licensed state surveyor".

(c) Certificates, seals, and other official documentation showing earlier terminology shall be considered valid for all purposes.

(d) License holders who have placed their license in an inactive status pursuant to §138.13 of this chapter (relating to Inactive Status) may use the terms in subsections (a) or (b) of this section but must include the term "inactive" or "retired" in conjunction with the designation.

§138.5. Registration and License Holder Notification Requirements. [~~Notification of Name Change, Address Change, Employer Change, and Criminal Convictions.~~]

(a) Each license or registration holder shall notify the board in writing not later than 30 days after a change in the person's legal name, personal mailing address, or employment status.

(b) A notice informing the board of a change in employment status shall include, as applicable, the:

(1) full legal trade or business name of the association or employment;

(2) physical location and mailing address of the business;

(3) telephone number of the business office;

(4) type of business (corporation, assumed name, partnership, or self-employment through use of own name);

(5) legal relationship and position of responsibility within the business; and

(6) effective date of this change.

(c) Each license or registration holder shall notify the board in writing not later than 30 days after a misdemeanor or felony criminal conviction, or any sanction is imposed against a licensee by another state's surveying board.

§138.12. Suspended License or Registration.

Offering or performing professional surveying services to the public while a license or registration is suspended is a violation of board rules and is subject to disciplinary action by the board.

§138.14. Voluntary Surrender of License or Registration.

(a) A license or registration holder who does not wish to maintain a license or registration, the legal guardian of the license or registration holder, or other legal representative of the license or registration holder may voluntarily surrender the license or registration by submitting a request in writing provided that the license or registration holder:

(1) is in good standing; and

(2) does not have an enforcement case pending before the board, other than cases alleging a violation of §138.5 (relating to Registration and License Holder Notification Requirements) and §138.17 (relating to Continuing Education) of this title.

(b) A license or registration that has been voluntarily surrendered may not be renewed. A license or registration holder who has voluntarily surrendered a license or registration may apply for a new license or registration.

§138.17. Continuing Education.

(a) Each license or registration holder shall meet the Continuing Education (CE) requirements for professional development as a condition for license or registration renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CE activity. PDH is the basic unit for CE reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in ABET-approved program or other related college course.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license or registration holder's field of practice.

(5) Self-directed study--Time spent engaging in professional development that is not otherwise identified in this rule. (Examples include, but are not limited to: reading/reviewing trade magazines or books, watching tutorials, and viewing other online content.)

(c) Every license or registration holder is required to obtain 12 PDH units during the renewal period year.

(d) A minimum of 3 PDH units per renewal period must be in the area of professional ethics, roles and responsibilities of professional surveying, or review of the Acts and Board Rules. PDH units carried forward may not be counted to meet the professional ethics requirement.

(e) If a license or registration holder exceeds the annual requirement in any renewal period, a maximum of 9 PDH units may be carried forward into the subsequent renewal period. Professional Development Hours must not be anticipated and cannot be used for more than one renewal period.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other groups.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other groups.

(5) Teaching or instructing as listed in paragraphs (1) through (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing or registration examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, through [including]:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization; or [and]

(C) Serving in other official positions.

(8) U.S. Patents issued.

(9) Engaging in self-directed study.

(10) Active participation in educational outreach activities, including activities that build awareness or skills regarding surveying, that involve [involving] K-12 or higher education students.

(11) A passing score on the Principles and Practice of Surveying examination in accordance with §134.73 of this title (relating to Examination Results and Analysis).

(g) All activities described in subsection (f) of this section shall be relevant to the practice of professional land surveying and may include educational, technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed study--1 PDH (Not to exceed 4 PDH).

(6) Each published paper, article, or book--10 PDH.

(7) Active participation in professional or technical society, association, agency, or organization--1 PDH (Not to exceed 5 PDH per organization).

(8) Active participation in educational outreach activities--1 PDH (Not to exceed 3 PDH).

(9) Each U.S. patent issued--15 PDH.

(10) Other activities shall be credited at 1 PDH for each hour of participation in the activity.

(11) A passing score on the Principles and Practice of Surveying examination in accordance with §134.73 of this title-- [-] 9 PDH.

(i) Determination of Credit.

(1) The board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The board shall not pre-approve or endorse any CE activities. It is the responsibility of each license or registration holder to assure that all PDH credits claimed meet CE requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed study will be based on one PDH unit for each hour of study and is not to exceed 4 PDH per renewal period. Credit determination for self-directed study is the responsibility of the license or registration holder and subject to review as required by the board.

(6) Credit determination for activities described in subsection (h)(4) of this section is the responsibility of the license or registration holder and subject to review as required by the board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license or registration holder serve as an officer of the organization, actively participate in a committee of the organization, or serve in other official positions. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit is valid for teaching a course or seminar for the first time only.

(j) The license or registration holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

(k) The license or registration holder must certify that CE requirements have been satisfied for that renewal year with the renewal application and fee.

(l) CE records for each license or registration holder must be maintained for a period of three years by the license holder.

(m) CE records for each license or registration holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the board or its authorized representative for audit verification purposes.

(2) If upon auditing a license or registration holder, the board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of surveying; the board may require the license or registration holder to acquire additional PDH as needed to fulfill the minimum CE requirements.

(n) A license or registration holder may be exempt from the continuing education requirements for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New license holders shall be exempt for their first renewal period if the Principles and Practice of surveying exam was taken within 12 months [1 calendar year] of the license or registration issuance date.

(2) A license or registration holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the continuing education hours required during that year.

(3) License or registration holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4) License or registration holders who list their status as "Inactive" and who further certify that they are not providing professional surveying services in Texas shall be exempt from the continuing education hours required.

(5) Exemptions must be claimed at the time of renewal.

(o) A license or registration holder may bring an inactive license to active status by obtaining all delinquent PDH units and submitting copies of CE records demonstrating compliance to the board or its authorized representative for verification purposes. If the total number required to become current exceeds 24 units, then 24 units shall be the maximum number required, and hours acquired must be within the two years prior to reactivation.

(p) Noncompliance:

(1) If a license or registration holder does not certify that CE requirements have been met for a renewal period, the license or registration shall be considered expired and subject to late fees and penalties.

(2) Failure to comply with CE reporting requirements as listed in this section is a violation of board rules and shall be subject to sanctions.

(3) A determination by audit that CE requirements have been falsely reported shall be considered to be misconduct and will subject the license or registration holder to disciplinary action.

(4) If found to be noncompliant, the board may require additional audits of the license or registration holder.

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

Filed with the Office of the Secretary of State on March 25, 2022.

TRD-202201064
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 440-7723

SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §§138.31, 138.33, 138.37

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1071.301, 1071.305, 1071.351 - .361.

§138.31. Seal Specifications.

(a) Upon issuance of a registration as a registered professional land surveyor, each registration holder is required to obtain a seal under the requirements of §134.97 of this title (relating to Issuance of Registration) [~~and submit an impression of the seal or an electronic seal, and an original or an electronic signature to the board for board records~~].

(b) In accordance with §1071.351(b) of the Surveying Act, physical [~~Physical~~] and electronic seals shall be of the Board-authorized designs [~~design~~] illustrated in this section and shall be no larger than two inches. Regardless of seal size the surveyor's name and number must be clearly legible.

(c) All physical seals obtained and used by registration holders must leave a permanent ink image or permanent impression of the seal attached to the surveying work.

(d) All seals obtained and used by registration holders shall contain any legal name, commonly accepted variation of the legal name, or initial combination with the surname as currently listed with the board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a legal name or initial combination. The name can be displayed on the seal using all uppercase letters, such as "LESLIE H. DOE" or using the standard combination of upper and lowercase letters, such as "Leslie H. Doe". If after registration, a registration holder legally changes his/her name, the registration holder must have a new seal or seals made showing the new legal name [~~and submit an imprint or imprints of the new seal(s) to the board for review, approval, and processing within 60 days of name change~~].
Figure: 22 TAC §138.31(c) (No change.)

(e) Preprinting of blank forms with a surveyor's seal, or the use of decal or other seal replicas is prohibited.

(f) When signing a surveying work, the surveyor may utilize the designation "R.P.L.S." or other terms as described in §138.1 of this chapter (relating to Registration Holder Designations).

(g) This section does not prevent the reproduction of sealed and signed, original works for distribution.

(h) Upon issuance of a license as a licensed state land surveyor, each license holder is required to obtain an additional seal.
Figure: 22 TAC §138.31(h) (No change.)

§138.33. Sealing Procedures.

(a) The purpose of the registered professional land surveyors and licensed state land surveyor seal is to assure the user of the surveying product that the work has been performed or directly supervised by the professional surveyor named and to delineate the scope of the surveyor's work.

(b) Registration and licensed holders shall only seal work done by them, performed under their direct supervision as defined in §131.2 of this title (relating to Definitions). Upon sealing, surveyors take full professional responsibility for that work.

(c) When a license or registration holder reviews and elects to incorporate the work products of others into a signed and sealed survey document, those items shall be clearly labeled as such and shall clearly indicate the identity of the originator.

(d) Registration holders shall take reasonable steps to ensure the security of their physical or electronic seals and electronic signatures. For electronic seals and electronic signatures, the surveyor must have reasonable security measures in place to protect these files. In the event of loss of a seal or electronic signature, the surveyor will, as soon as possible, but no later than 30 days of discovery, give written notification of the facts concerning the loss to the board.

(e) Preliminary documents released from a land surveyor's control shall identify the purpose of the document, the land surveyor of record and the land surveyor's registration number, and the release date. Such preliminary documents shall not be signed or sealed and

shall bear the following statement in the signature space or upon the face of the document: "Preliminary, this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document". Preliminary documents released from the land surveyor's control which include this text in place of the land surveyor's signature need not comply with the other minimum standards promulgated in this chapter.

(f) License and registration holders shall affix their seal and original signature or electronic seal and signature with the date on the final version of their professional surveying work before such work is released from their control. The signature and date shall not obscure the surveyor's name or registration number in the seal.

(g) Work performed by more than one registration holder shall be sealed in a manner such that all surveying work can be clearly attributed to the responsible registration holder or registration holders. When surveying work on which two or more registration holders have worked, the seal and signature of each registration holder shall be placed on the surveying work with a notation describing the work done under each registration holder's responsible charge.

(h) Registered employees of the state, its political subdivisions, or other public entities are responsible for sealing their original surveying work; however, such registered employees engaged in review and evaluation for compliance with applicable law or regulation of surveying work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(i) A local authority may require an original seal and/or signature on reproduced documents.

(j) Any surveying work issued by a registration holder for land or property in this state must include the registration holder's seal placed on the document. A registration holder is not required to use a Texas seal if the surveying work is located in another state or country.

(k) A surveyor may securely transmit his or her final version of surveying work electronically, provided that work bears the surveyor's seal and uses one of the techniques described in §138.35(a) of this chapter (relating to Electronic Seals and Electronic Signatures) and must employ reasonable security measures to make the documents unalterable. Electronic correspondence of this type may be followed by a hard copy containing the surveyor's printed name, date, signature and the designation "R.P.L.S." or other terms described in §138.1 of this chapter (relating to Registration Holder Designations).

(l) A registration holder is not required to use a seal for a project for which the registration holder is not required to hold a registration under the Surveying Act.

(m) All surveying documents released, issued, or submitted by a registration holder, including preliminary documents, shall clearly indicate the firm name and registration number of the surveying firm by which the professional surveyor is employed.

(1) If the surveyor is employed by a local, State, or Federal Government agency, then only the name of the agency shall be required.

(2) If the surveyor is exempt from sealing a document under subsection (l) of this section, but elects to seal a document, then only the name of the employer shall be required.

(n) Licensed state land surveyors must sign and seal surveying documents and surveying work submitted to the General Land Office, including field notes, plats, and reports, with both their registered professional land surveyor seal and the licensed state land surveyor seal.

(o) Use of a seal that is not in compliance with the requirements of §138.31 of this title (relating to Seal Specifications) by a registration or license holder is a violation of Board rules and subject to sanctions.

§138.37. Sealing Misconduct.

(a) A registration holder is guilty of misconduct and subject to disciplinary action if the registration holder:

(1) knowingly signs or seals any surveying document or product if its use or implementation may endanger the health, safety, property or welfare of the public.

(2) signs or affixes a seal on any document or product when the registration is inactive or has been revoked, suspended, or has expired.

(3) allows others access to his or her electronic files containing his or her seal and/or electronic signature, unless access is explicitly authorized for particular surveying work.

(b) A person not registered by the board shall not use, cause to be used, affix, or cause to be affixed or in any other manner, regardless of the means, attach or in any way depict a surveying seal or a representation of a surveying seal without the express permission of the currently active registration holder.

(c) A person shall not use, cause to be used, affix, cause to be affixed, or in any other manner, regardless of the means, attach or in any way depict a fraudulent surveying seal or a fraudulent representation of a surveying seal.

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

Filed with the Office of the Secretary of State on March 25, 2022.

TRD-202201065

Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: May 8, 2022

For further information, please call: (512) 440-7723

SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §138.57, §138.61

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1071.301, 1071.305, 1071.351 - .361.

§138.57. Surveyors Shall Be Objective and Truthful.

(a) Surveyors shall issue statements only in an objective and truthful manner. The issuance of oral or written assertions in the practice of surveying shall not be:

(1) fraudulent;

(2) deceitful; or

(3) misleading or shall not in any manner whatsoever tend to create a misleading impression.

(b) Surveyors shall [~~should strive to~~] make affected parties aware of the surveyors' professional concerns regarding particular actions or projects, and of the consequences of surveying decisions or judgments that are overruled or disregarded.

(c) The surveyor shall disclose a potential conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A potential conflict of interest exists when a surveyor accepts employment when a reasonable probability exists that the surveyor's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. A surveyor may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. A surveyor in a potential conflict of interest employment shall maintain the interests of the client and other parties as provided by §138.61 of this title (relating to Surveyors Shall Maintain Confidentiality of Clients) and other rules and statutes.

§138.61. Surveyors Shall Maintain Confidentiality of Clients.

(a) The surveyor may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety, or welfare of the public.

(b) The surveyor shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of a third party.

(c) The surveyor shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the surveyor's [~~engineer's~~] employees and associates.

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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Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 440-7723

CHAPTER 139. ENFORCEMENT

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 139, regarding Enforcement, specifically §139.17, relating to Investigating a Complaint, §139.35, relating to Sanctions and Penalties - Engineering, and §139.37, relating to Sanctions and Penalties - Surveying. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 139 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act and Texas Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act. The proposed rules address the Board's notification to the parties of an open investigation and the suggested sanctions for violating the provisions of the Texas Engineering Practice Act, the Professional Land Surveying Practices Act, or Board rules (22 Texas Administrative Code, Chapters 131-139).

SECTION-BY-SECTION SUMMARY

The proposed rules amend §139.17 to be consistent with the language found in the Texas Engineering Practice Act, specifically Texas Occupations Code §1001.253(d).

The proposed rules amend §139.35 to adjust some suggested sanctions for violating certain portions of the Board rules regarding engineering. The proposed rules also incorporate newly proposed rules regarding the use of a non-compliant seal, the use of a fraudulent seal, and the offer to practice or practice of engineering while one's license is suspended as detailed in the proposed rules to Chapter 137. Lastly, the proposed rules amend §139.35 to include clarifying language to make this rule clearer.

The proposed rules amend §139.37 to adjust some suggested sanctions for violating certain portions of the Board rules regarding surveying. The proposed rules also incorporate previously adopted rules that were inadvertently left out of the sanction tables and newly proposed rules regarding the use of a non-compliant seal, the use of a fraudulent seal, and the offer to practice or practice of surveying while one's license is suspended as detailed in the proposed rules to Chapter 137. The proposed rules also correct erroneous rule citations that were included in the rule when it was originally adopted in December 2020. Lastly, the proposed rules amend §139.37 to include clarifying language to make this rule clearer.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Michael Sims, P.E., Director of Compliance and Enforcement for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Sims has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the clarification of rules and improved efficiency of Board operations.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rule does not expand an existing regulation but does remove the requirement that new licensees submit a copy of their seal to the board.

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

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are 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 §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741; or faxed to his attention at (512) 440-0417.

SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §139.17

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.4501 - .556 and 1071.401 - 405.

§139.17. Investigating a Complaint.

(a) The board staff shall be responsible for investigating the complaint including determining the need for and obtaining any additional evidence that may be required to proceed with disciplinary action.

(b) Board staff and persons acting in the official capacity of the board have authority to:

(1) informally or formally request information and documentation from the involved parties;[,]

(2) perform site visits or inspections to investigate the complaint;[,]

(3) contract technical consultants and other services to investigate and evaluate aspects of the complaint or evidence;[,]

(4) subpoena information, as required;[,]

(5) seek the assistance of local and state law enforcement authorities;[,] and/or

(6) seek out any other investigative action needed to assist in the resolution of the complaint.

(c) Upon determination that sufficient evidence exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the person or entity by personal service or by certified or registered mail of the alleged violation. The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Acts or board rules.

(d) At any time before a complaint is resolved, board staff may conduct further investigation including, but not limited to, obtaining second or third opinions, obtaining supporting documents, or interviewing other witnesses depending on the case at hand.

(e) If the board staff intends to dismiss the complaint because the investigation of the complaint does not produce sufficient evidence to substantiate a violation of the Acts or board rules, the board staff will inform the complainant of the rationale for the determination prior to reporting the dismissal to the board.

(f) Withdrawal of a complaint shall not be a reason to terminate or disrupt an ongoing investigation.

(g) At least quarterly until final disposition [during the investigation] of the complaint, the board shall notify the parties to [of] the complaint of the complaint status unless the notice would jeopardize an undercover investigation and such notation shall be included in the complaint file.

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

Filed with the Office of the Secretary of State on March 25, 2022.

TRD-202201067

Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: May 8, 2022

For further information, please call: (512) 440-7723

SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35, §139.37

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1001.4501 - .556 and 1071.401 - 405.

§139.35. Sanctions and Penalties - Engineering.

(a) The board, the executive director, an administrative law judge, and the participants in an informal settlement conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be $100 per violation. Pursuant to §1001.502(a) of the Act, the maximum administrative penalty shall be $5,000.00 per violation of Chapter 1001 or a rule adopted or order issued under that chapter. Each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order, and the severity of the disciplinary action will be based on the following factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of prior violations of the respondent;

(3) the severity of penalty necessary to deter future violations;

(4) efforts or resistance to efforts to correct the violations;

(5) the economic harm to property or the environment caused by the violation; and

(6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued may [could] be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list "suspension", all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.
Figure: 22 TAC §139.35(b)
[Figure: 22 TAC §139.35(b)]

(c) The following is a table of suggested sanctions that may be imposed against a *person or business entity* [person or business entity] for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.
Figure: 22 TAC §139.35(c)
[Figure: 22 TAC §139.35(c)]

(d) - (e) (No change.)

§139.37. Sanctions and Penalties - Surveying.

(a) The board, the executive director, an administrative law judge, and the participants in an informal settlement conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be $100 per violation. Pursuant to §1001.502(a) of the Act, the maximum administrative penalty shall be $1,500.00 per violation of Chapter 1071 or a rule adopted or order issued under that chapter. Each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of prior violations of the respondent;

(3) the severity of penalty necessary to deter future violations;

(4) efforts or resistance to efforts to correct the violations;

(5) the economic harm to property or the environment caused by the violation; and

(6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list "suspension", all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.
Figure: 22 TAC §139.37(b)
[~~Figure: 22 TAC §139.37(b)~~]

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.
Figure: 22 TAC §139.37(c)
[~~Figure: 22 TAC §139.37(c)~~]

(d) (No change.)

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

Filed with the Office of the Secretary of State on March 25, 2022.

TRD-202201068
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 440-7723

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 556. NURSE AIDES

26 TAC §§556.2, 556.3, 556.5 - 556.13

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §556.2, concerning Definitions; §556.3, concerning Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements; §556.5, concerning Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements; §556.6, concerning Competency Evaluation Requirements; §556.7, concerning Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP); §556.8, concerning Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP); §556.9, concerning Nurse Aide Registry and Renewal; §556.10, concerning Expiration of Active Status; §556.11, concerning Waiver, Reciprocity, and Exemption Requirements; §556.12, concerning Findings and Inquiries; and §556.13, concerning Alternate Licensing Requirements for Military Service Personnel.

BACKGROUND AND PURPOSE

The purpose of the proposal is to address the shortage of certified nurse aides by expanding the definition of a clinical site to allow certain health care facilities other than nursing facilities to serve as a NATCEP clinical site.

The proposed rules implement Texas Health and Safety Code, Chapter 250, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses, created by Senate Bill (S.B.) 1103, 87th Legislature, Regular Session, 2021. Chapter 250 states that nurse aides must be provided a certificate of registration to be placed on the Nurse Aide Registry.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §556.2 change the definition of "facility" to expand the meaning of a clinical training site to include assisted living facilities, intermediate care facilities for individuals with an intellectual disability or related condition, hospitals, and special hospitals with long-term care acute facilities. The amendments also update the definition of "nurse aide" to include the phrase "who has been issued a certificate of registration" to comply with S.B. 1103 and the definition of "nurse aide training and competency evaluation program (NATCEP) application" to include the word "nursing" to the facility type.

The proposed amendments to §556.3 include the requirement that a nursing facility must participate in Medicare, Medicaid, or both to apply for approval to be a NATCEP. The proposed amendments require a clinical site to have all necessary equipment needed to practice and perform skills training; permit a NATCEP to offer clinical training hours in a laboratory setting under certain limited circumstances; and require that a clinical training provided by a NATCEP in a facility other than a nursing facility be provided under direct supervision of the NATCEP instructor and not delegated to other staff. A NATCEP using an assisted living facility or intermediate care facility for an individual with an intellectual disability or related condition as a clinical site may provide clinical training only in those services that are authorized to be provided under those facilities' licenses. The proposed amendments also permit a nursing facility to request a waiver of a NATCEP prohibition related to a civil money penalty from the Centers for Medicare and Medicaid Services (CMS).

The proposed amendments to §556.5 add "nursing" next to facility throughout the section to specify that this subsection applies specifically to nursing facilities.

The proposed amendments to §556.6 correct the term "multiple choice" to "multiple-choice." The amendments remove the word "must" and replace it with permissive language "may," regarding the printing of written examination questions in a test booklet; provide the option of providing an online testing format as approved by HHSC; and include the issuance of a certificate of registration from HHSC upon a person's successful completion of the competency evaluation to implement S.B. 1103.

The proposed amendment to §556.7 adds language referencing "the certificate of registration."

The proposed amendments to §556.8 add "nursing" in front of the term facility to distinguish the type of facility the subsection applies to.

The proposed amendments to §556.9 add "nursing" in front of the term facility to distinguish the type of facility. The proposed amendments also add "certificate of registration" throughout the section, state that HHSC is the agency responsible for issuing a certificate of registration, and renumber the subsections accordingly.

The proposed amendments to §556.10 add language referencing the "certificate of registration" and change the title from "Ex-

piration of Active Status" to "Expiration of the Certificate of Registration and Active Status."

The proposed amendments to §556.11 add the "certificate of registration" throughout the section and "nursing" in front of the term facility to distinguish the type of facility the section applies to.

The proposed amendments to §556.12 add "nursing" in front of the term facility to distinguish the type of facility the section applies to. The amendments also clarify a reference and language regarding the certificate of registration and when HHSC revokes or suspends the certificate of registration.

The proposed amendments to §556.13 add the "certificate of registration."

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, HHSC Associate Commissioner for Long-term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that more training sites for nurse aides means nurse aides will have more location options for training and can get trained so they can work in the field sooner, which will reduce staff shortages from the COVID-19 pandemic.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because these rules provide additional flexibility to nurse aides and NATCEPs for rules that they are already required to comply with.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSCLTCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 21R164" in the subject line.

STATUTORY AUTHORITY

The proposed 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 Texas Health and Safety Code §250.0035(d), which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035, related the issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §531.0035.

§556.2. Definitions.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(10) Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.

(11) Direct supervision--Observation of a trainee performing skills in a NATCEP.

(12) Employee misconduct registry (EMR)--The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(13) Facility--Means:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) a licensed intermediate care facility for an individual with an intellectual disability or related condition licensed under Texas Health and Safety Code, Chapter 252;

(C) a type B assisted living facility licensed under Texas Health and Safety Code, Chapter 247; or

(D) a general or special hospital licensed under Texas Health and Safety Code, Chapter 241. [~~A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.~~]

(14) Facility-based NATCEP--A NATCEP offered by or in a nursing facility.

(15) General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

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

(17) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(18) Informal Review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct by providing testimony and supporting documentation to an impartial HHSC staff person.

(19) Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

(A) a physician;

(B) a physician assistant;

(C) a physical, speech, or occupational therapist;

(D) a physical or occupational therapy assistant;

(E) a registered nurse;

(F) a licensed vocational nurse; or

(G) a licensed social worker.

(20) Licensed nurse--A registered nurse or licensed vocational nurse.

(21) Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(22) Military service member--A person who is on active duty.

(23) Military spouse--A person who is married to a military service member.

(24) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(25) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(26) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(27) Non-facility-based NATCEP--A NATCEP not offered by or in a nursing facility.

(28) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity and who has been issued a certificate of registration. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(29) Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect[~~,~~] or misappropriation of resident property.

(30) Nurse aide training and competency evaluation program (NATCEP)--A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility.

(31) Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(32) Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) management of health care during acute and chronic phases of illness;

(D) guidance and counseling of individuals and families; and

(E) referral to other health care providers and community resources when appropriate.

(33) Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP.

(34) Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(35) Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(36) Program director--An individual who is approved by HHSC and meets the requirements in §556.5(a) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(37) Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(b) of this chapter.

(38) Resident--An individual accepted for care or residing in a facility.

(39) Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(40) Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(d) of this chapter.

(41) Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.

(a) To train nurse aides, a nursing facility must apply for and obtain approval from HHSC to offer a NATCEP or [the facility must] contract with another entity offering a NATCEP. The nursing facility must participate in Medicare, Medicaid, or both, to apply for approval to be a NATCEP.

(b) A person who [that] wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each location at [from] which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site. The clinical site must have all necessary equipment needed to practice and perform skills training.

(e) A NATCEP may offer clinical training hours in a laboratory setting under the following circumstances:

(1) no appropriate and qualified clinical site is located within 20 miles of the location of the NATCEP; or

(2) HHSC has determined that clinical training provided in a facility poses a risk to an individual's health or safety based on the existence of a disaster declared at the federal or state level. A NATCEP must request the ability to complete clinical training hours in a laboratory setting under the circumstances described in subsection (e)(1) of this section. HHSC will alert the public of the availability of laboratory training under the circumstances described in subsection (e)(2) of this section.

(f) [(e)] HHSC does not approve a NATCEP offered by or in a nursing facility if, within the previous two years, the nursing facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than $5,000 as adjusted annually under 45 Code of Federal Regulations (CFR) [CFR] part 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(g) Clinical training provided by a NATCEP in a facility other than a nursing facility must be provided under the direct supervision of the NATCEP instructor and cannot be delegated to any staff of the facility.

(h) A NATCEP using an assisted living facility as a clinical site may provide clinical training only in those services that are authorized to be provided to residents under Texas Health and Safety Code, Chapter 247.

(i) A NATCEP using an intermediate care facility for an individual with an intellectual disability or related conditions as a clinical site may provide clinical training only in those services that are authorized to be provided to individuals under Texas Health and Safety Code, Chapter 252.

(j) [(f)] A nursing facility that is prohibited from offering a NATCEP under subsection (e) [(f)] of this section may [must] contract with a person [who has not been employed by the facility or by the facility's owner] to offer a NATCEP in accordance with §1819(f)(2)(C) [§1819(f)(2)] and §1919(f)(2)(C) [§1919(f)(2)] of the Act so long as the person has not been employed by the nursing facility or by the nursing facility's owner and [if]:

(1) the NATCEP is offered to employees of the nursing facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited nursing facility;

(3) there is no other NATCEP offered within a reasonable distance from the nursing facility; and

(4) an adequate environment exists for operating a NATCEP in the nursing facility.

(k) [(g)] A person who wants to contract with a nursing facility in accordance with subsection (j) [(f)] of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited nursing facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the nursing facility is no longer prohibited from offering a NATCEP.

(l) A nursing facility that is prohibited from offering a NATCEP under subsection (e)(3) of this section may request a Centers for Medicare and Medicaid Services waiver of the prohibition related to the civil money penalty in accordance with §1819(f)(2)(D) and §1919(f)(2)(D) of the Act and 42 CFR §483.151(c) if:

(1) the civil money penalty was not related to the quality of care furnished to residents;

(2) the NATCEP submits a request to HHSC for the waiver; and

(3) the Centers for Medicare and Medicaid Services approves the waiver.

(m) [~~(h)~~] A NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training with at least one program instructor for every 10 trainees.

(n) [~~(i)~~] A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (q) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

(A) verify a trainee's identity;

(B) ensure protection of a trainee's privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(o) [~~(j)~~] A NATCEP must teach the curriculum established by HHSC and described in 42 CFR [~~the Code of Federal Regulations, Title 42,~~] §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;

(2) infection control;

(3) safety and emergency procedures, including the Heimlich maneuver;

(4) promoting a resident's independence;

(5) respecting a resident's rights;

(6) basic nursing skills, including:

(A) taking and recording vital signs;

(B) measuring and recording height and weight;

(C) caring for a resident's environment;

(D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(E) caring for a resident when death is imminent;

(7) personal care skills, including:

(A) bathing;

(B) grooming, including mouth care;

(C) dressing;

(D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self-care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(p) [~~(k)~~] A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(q) [~~(l)~~] A NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(r) [~~(m)~~] A NATCEP must verify that a trainee:

(1) is not listed on the NAR in revoked status;

(2) is not listed as unemployable on the EMR; and

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.

(s) [~~(n)~~] A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(t) [~~(o)~~] A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(u) [~~(p)~~] A NATCEP must use an HHSC performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(v) [~~(q)~~] A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (i)(2) of this section.

(2) A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(w) [~~(r)~~] A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(x) [~~(s)~~] HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(y) [~~(t)~~] HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(z) [~~(u)~~] HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(aa) [~~(v)~~] A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(bb) [~~(w)~~] A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.5. Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements.

(a) Program director. A program director must directly perform training or have general supervision of the program instructor and supplemental trainers. A NATCEP must have a program director when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval.

(1) The program director must:

(A) be an RN in the state of Texas;

(B) have a minimum of two years of nursing experience, with at least one year of providing long term care services in a nursing facility; and

(C) have completed a course that focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(2) In a facility-based NATCEP, the director of nursing (DON) for the nursing facility may be approved as the program director[,] but must not conduct the training.

(3) A program director may supervise more than one NATCEP.

(4) A program director's responsibilities include, but are not limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) directly performing training or having general supervision of the program instructor and supplemental trainers;

(C) ensuring that NATCEP records are maintained;

(D) determining if trainees have passed the training portion of the NATCEP;

(E) signing a competency evaluation application completed by a trainee who has passed the training portion of the NATCEP; and

(F) signing a certificate of completion or a letter on letterhead stationery of the NATCEP or the nursing facility, stating that the trainee passed the training portion of the NATCEP if the trainee does not take the competency evaluation with the same NATCEP. The certificate or letter must include the date training was completed, the total training hours completed, and the official NATCEP name and number on file with HHSC.

(5) A NATCEP must submit a NATCEP application for HHSC approval if the program director of the NATCEP changes.

(b) Program instructor. A NATCEP must have at least one qualified program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter and when training occurs.

(1) A program instructor must:

(A) be a licensed nurse;

(B) have a minimum of one year of nursing experience in a nursing facility;

(C) have completed a course that focused on teaching adult students or have experience teaching adult students or supervising nurse aides; and

(D) work under the general supervision of the program director or be the program director.

(2) The program instructor is responsible for conducting the classroom and clinical training of the NATCEP under the general supervision of the program director.

(3) An applicant for a NATCEP must certify on the NATCEP application that all program instructors meet the requirements in paragraph (1)(A) - (D) of this subsection.

(4) A NATCEP must submit a NATCEP application for HHSC approval if a program instructor of the NATCEP changes.

(c) Supplemental trainers. Supplemental trainers may supplement the training provided by the program instructor in a NATCEP.

(1) A supplemental trainer must be a licensed health professional acting within the scope of the professional's practice and have at least one year of experience in the field of instruction.

(2) The program director must select and supervise each supplemental trainer.

(3) A supplemental trainer must not act in the capacity of the program instructor without HHSC approval. To request approval, a NATCEP must submit a NATCEP application to HHSC.

(d) Skills examiner. A skills examiner must administer a competency evaluation.

(1) HHSC or its designee approves an individual as a skills examiner if the individual:

(A) is an RN;

(B) has a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age; and

(C) has completed a skills training seminar conducted by HHSC or its designee.

(2) A skills examiner must:

(A) adhere to HHSC standards for each skill examined;

(B) conduct a competency evaluation in an objective manner according to the criteria established by HHSC;

(C) validate competency evaluation results on forms prescribed by HHSC;

(D) submit prescribed forms and reports to HHSC or its designee; and

(E) not administer a competency evaluation to an individual who participates in a NATCEP for which the skills examiner was the program director, the program instructor, or a supplemental trainer.

§556.6. Competency Evaluation Requirements.

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer the evaluation.

(d) An eligible trainee must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) promptly, after one of its trainees successfully completes the NATCEP training, approve the trainee to take a competency evaluation;

(2) provide the trainee with information regarding scheduling a competency evaluation; and

(3) ensure that the trainee accurately completes the competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for a competency evaluation;

(3) complete a competency evaluation application and submit the application in accordance with application instructions;

(4) request another competency evaluation if the trainee fails a competency evaluation; and

(5) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple-choice [~~multiple choice~~] questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions [~~must~~] may be printed in a test booklet with a separate answer sheet or provided in an online testing format as approved by HHSC. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the competency evaluation, a trainee must achieve a score HHSC designates as a passing score on:

(1) the skills demonstration; and

(2) the written or oral examination.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before the trainee takes [~~taking~~] a competency evaluation that HHSC issues a certificate of registration and records successful completion of the competency evaluation on the NAR.

(l) HHSC, or its designee, issues the certificate of registration and records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A nursing facility must not offer or serve as a competency evaluation site if the nursing facility is prohibited from offering a NATCEP under the provisions of §556.3(f) [~~§556.3(e)~~] of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged for any portion of a competency evaluation if the trainee is employed by or has received an offer of employment from a nursing facility on the date the trainee takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual to take a competency evaluation if the individual is employed as a nurse aide by, or has received an offer of employment from, a nursing facility within 12 months after taking the competency evaluation.

§556.7. Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) A NATCEP must apply to have its approval renewed every two years. HHSC sends a notice of renewal to a NATCEP at least 60 days before the expiration date of an approval.

(b) A NATCEP must submit a NATCEP application at least 30 days before the expiration date of an approval. If a NATCEP does not file an application to renew an approval at least 30 days before the expiration of the approval, the approval expires.

(c) HHSC uses the results of an on-site visit to determine NATCEP compliance with the Act and this chapter and to decide whether to renew the approval of a NATCEP.

(d) HHSC may conduct an on-site review of a NATCEP at any reasonable time.

(e) HHSC provides written notification to a NATCEP of deficiencies found during an on-site review.

(1) If a NATCEP receives a notification of deficiencies from HHSC, the NATCEP must submit a written response to HHSC, which must include a plan of correction (POC) to correct all deficiencies.

(2) HHSC may direct a NATCEP to comply with the requirements of the Act and this chapter.

(3) HHSC may not renew the approval of a NATCEP that does not meet the requirements of the Act and this chapter by failing to provide an adequate POC.

(f) A NATCEP approved by HHSC may provide in-service education to a nurse aide that is necessary to have the certificate of registration and associated [a] listing on the NAR renewed.

(g) A NATCEP must receive approval or an exemption under Texas Education Code Chapter 132 (relating to Career Schools and Colleges).

§556.8. Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) HHSC immediately withdraws approval of a nursing facility-based [~~facility-based~~] NATCEP if the nursing facility where the NATCEP is offered has:

(1) been granted a waiver concerning the services of an RN under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) been subject to an extended (or partially extended) survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) been assessed a civil money penalty of not less than $5,000 as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) been subject to denial of payment under Title XVIII or Title XIX of the Act;

(5) operated under state-appointed or federally appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Social Security Act;

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2); or

(8) refused to permit unannounced visits by HHSC.

(b) HHSC withdraws approval of a NATCEP if the NATCEP does not comply with §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(c) If HHSC withdraws approval of a NATCEP for failure to comply with §556.3 of this chapter, HHSC does not approve the NATCEP for at least two years after the date the approval was withdrawn.

(d) If HHSC proposes to withdraw approval of a NATCEP based on subsection (a) of this section, HHSC notifies the NATCEP by certified mail of the facts or conduct alleged to warrant the withdrawal. HHSC mails the notice to the facility's last known address as shown in HHSC records.

(e) A dually certified nursing facility that offers a NATCEP may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself, in accordance with 42 Code of Federal Regulations (CFR), Part 498.

(f) A nursing facility that offers a NATCEP and that participates only in Medicaid may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act), except the nursing facility must request the hearing within 60 days after receipt of the notice described in subsection (d) of this section, as allowed by 42 CFR §431.153.

(g) A nursing facility may request a hearing under subsection (e) or (f) of this section, but not both.

(h) If the finding of noncompliance that led to the denial of approval of the NATCEP by HHSC is overturned, HHSC rescinds the denial of approval of the NATCEP.

(i) If HHSC proposes to withdraw approval of a NATCEP based on §556.3 of this chapter or §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing to challenge the withdrawal. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedures Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If a NATCEP does not make a timely request for a hearing, the applicant has waived the opportunity for a hearing and HHSC may withdraw the approval.

(j) A trainee who started a NATCEP before HHSC sent notice that it was withdrawing approval of the NATCEP may complete the NATCEP.

§556.9. Certificate of Registration, Nurse Aide Registry, and Renewal.

(a) HHSC is the agency responsible for issuing individuals a certificate of registration and listing them on the NAR.

(b) [(a)] To be issued a certificate of registration and be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements).

(c) [(b)] HHSC does not charge a fee to issue the certificate of registration or list a nurse aide on the NAR or to renew the certificate of registration and the nurse aide's listing of active status on the NAR.

(d) [(c)] A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number.

(e) [(d)] The certificate of registration and the [A] listing of active status on the NAR expires 24 months after the certificate of registration was issued and the nurse aide was [is] listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew the certificate of registration and active status on the NAR, the following requirements must be met:

(1) A nursing facility must submit a HHSC Employment Verification form to HHSC that documents that the nurse aide has performed paid nursing or nursing-related services at the nursing facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form to HHSC to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the nursing facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year.

(4) A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a nursing facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a nursing facility, licensed or certified by HHSC, the Texas Department of State Health Services, or the Texas Board of Nursing.

(5) No more than 12 hours of the in-service education required by paragraph (4) of this subsection may be provided by an entity described in paragraph (4)(D) of this subsection.

§556.10. Expiration of the Certificate of Registration and Active Status.

(a) A nurse aide's certificate of registration and status on the NAR is changed to expired if:

(1) the nurse aide has not performed nursing-related services or acted as a nurse aide for monetary compensation for 24 consecutive months; or

(2) effective September 1, 2013, the nurse aide has not completed 24 hours of in-service education during the preceding two years.

(b) A nurse aide [aid] whose certificate of registration has expired and [status] is listed as expired on the NAR must complete a NATCEP or a competency evaluation to reactivate the certificate of registration and be listed on the NAR with active status.

§556.11. Waiver, Reciprocity, and Exemption Requirements.

(a) HHSC may waive the requirement for a nurse aide to take the NATCEP specified in §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) and issue a certificate of registration and place a nurse aide on the NAR on active status if the nurse aide:

(1) submits proof of completing a nurse aide training course of at least 100 hours duration before July 1, 1989;

(2) submits a HHSC Employment Verification form to HHSC to document that the nurse aide performed nursing or nursing-related services for monetary compensation at least once every two years since July 1, 1989;

(3) is not listed as unemployable on the EMR;

(4) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) completes the HHSC Waiver of Nurse Aide Training and Competency Evaluation Program form.

(b) HHSC issues the certificate of registration and places a nurse aide on the NAR by reciprocity if:

(1) the nurse aide is listed as having active status on another state's registry of nurse aides;

(2) the other state's registry of nurse aides is in compliance with the Act;

(3) the nurse aide is not listed as unemployable on the EMR;

(4) the nurse aide has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) the nurse aide completes a HHSC Reciprocity form and submits it to HHSC.

(c) A person is eligible to take a competency evaluation with an exemption from the nurse aide training specified in §556.3 of this chapter if the individual:

(1) meets one of the following requirements for eligibility:

(A) is seeking renewal under §556.9 of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal);

(B) has successfully completed at least 100 hours of training at a NATCEP in another state within the preceding 24 months but has not taken the competency evaluation or been placed on an NAR in another state;

(C) has successfully completed at least 100 hours of military training, equivalent to civilian nurse aide training, on or after July 1, 1989;

(D) has successfully completed an RN or LVN program at an accredited school of nursing in the United States within the preceding 24 months; [,] and:

(i) is not licensed as an RN or LVN in the state of Texas; and

(ii) has not held a license as an RN or LVN in another state that has been revoked; or

(E) is enrolled or has been enrolled within the preceding 24 months in an accredited school of nursing in the United States and demonstrates competency in providing basic nursing skills in accordance with the school's curriculum;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years;

(4) submits documentation to verify at least one of the requirements in paragraph (1) of this subsection;

(5) arranges for a nursing facility or NATCEP to serve as a competency evaluation site; and

(6) before taking the competency evaluation, presents to the skills examiner an original letter from HHSC authorizing the person to take the competency evaluation.

§556.12. Findings and Inquiries.

(a) HHSC reviews and investigates allegations of abuse, neglect, or misappropriation of resident property by a nurse aide employed in a nursing facility. If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, before entry of the finding on the NAR, HHSC provides the nurse aide an opportunity to dispute the finding through an informal review (IR) and a hearing as described in this section.

(b) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC sends the nurse aide a written notice regarding the finding. The notice includes:

(1) a summary of the findings and facts on which the findings are based;

(2) a statement informing the nurse aide of the right to an IR to dispute HHSC findings;

(3) a statement informing the nurse aide that a request for an IR must be made within 10 days after the date the nurse aide receives the written notice; and

(4) the address and contact information for the local HHSC regional office, where the nurse aide must submit a request for an IR.

(c) If a nurse aide requests an IR, HHSC sets a date to allow the nurse aide to dispute the findings of the investigation of abuse, neglect, or misappropriation of resident property. The nurse aide may dispute the findings by providing testimony, in person or by telephone, to an impartial HHSC staff person at the local HHSC regional office.

(1) If the staff person does not uphold the findings, HHSC notifies the nurse aide of the results of the IR and closes the investigation. HHSC does not record information related to the investigation in the NAR.

(2) If the staff person upholds the findings, HHSC notifies the nurse aide of the results of the IR. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(3) If the nurse aide does not request an IR, or fails to appear for a requested IR, HHSC upholds the findings. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(d) A nurse aide may request a hearing after receipt of HHSC notice of the results of an IR described in subsection (c)(2) of this section. 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act) govern the hearing, except that a nurse aide must request a formal hearing within 30 days after receipt of HHSC notice in compliance with 42 Code of Federal Regulations (CFR) [CFR] §488.335. If the nurse aide fails to request a hearing, the nurse aide waives the opportunity for a hearing and HHSC enters the finding of abuse, neglect, or misappropriation of resident property, as appropriate, on the NAR.

(e) If HHSC receives an allegation that a nurse aide, who has a medication aide permit under Chapter 557 of this title (relating to Medication Aides--Program Requirements), committed an act of abuse, ne-

glect, or misappropriation of resident property, HHSC investigates the allegation under this section regarding the nurse aide practice and under Chapter 557 of this title to determine if the allegation violates the medication aide practice. The investigations run concurrently. If after the investigations, the nurse aide requests hearings on the findings under the nurse aide practice and the medication aide practice, only one hearing, conducted in accordance with subsection (d) of this section, is available to the nurse aide.

(f) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC reports the finding to:

(1) the NAR;

(2) the nurse aide;

(3) the administrator of the nursing facility in which the act occurred; and

(4) the administrator of the nursing facility that employs the nurse aide, if different from the nursing facility in which the act occurred.

(g) The NAR must include the findings involving a nurse aide listed on the NAR, as well as any brief statement of the nurse aide disputing the findings.

(h) The information on the NAR is available to the public.

(i) If an inquiry is made about a nurse aide's status on the NAR, HHSC must:

(1) verify if the nurse aide is listed on the NAR;

(2) disclose information concerning a finding of abuse, neglect, or misappropriation of resident property involving the nurse aide; and

(3) disclose any statement by the nurse aide related to the finding.

(j) If a nurse aide works in a capacity other than a nurse aide in a nursing facility and is listed as unemployable in the EMR, HHSC revokes or suspends the certificate of registration and changes the status of the nurse aide's listing on the NAR to revoked or suspended. The due process available to the nurse aide before placement on the EMR satisfies the due process required before HHSC revokes or suspends the certificate of registration and changes the nurse aide's status on the NAR.

(k) If HHSC revokes or suspends the certificate of registration and lists a nurse aide's status on the NAR as suspended or revoked because of a single finding of neglect, the nurse aide may request that HHSC reissue the certificate of registration and remove the finding after the finding has been listed on the NAR for one year. To request removal of the finding, the nurse aide must submit a HHSC Petition for Removal of Neglect Finding to HHSC in accordance with the petition's instructions.

§556.13. Alternate Licensing Requirements for Military Service Personnel.

(a) Additional time for in-service education.

(1) HHSC gives a nurse aide an additional two years to complete in-service education required for a nurse aide to maintain their certificate of registration and an active listing on the NAR, as described in §556.9(e)(3) [~~§556.9(d)(3)~~] of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal), if HHSC receives and approves a request for additional time to complete in-service training from a nurse aide in accordance with this subsection.

(2) To request additional time to complete in-service education, a nurse aide must submit a written request for additional time to HHSC before the expiration date of the nurse aide's certification. The nurse aide must include with the request documentation of the nurse aide's status as a military service member that is acceptable to HHSC. Documentation as a military service member that is acceptable to HHSC includes a copy of a military service order issued by the United States Armed Forces, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the nurse aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete in-service education submitted in accordance with this subsection if HHSC determines that the nurse aide is a military service member, except HHSC does not approve a request if HHSC granted the nurse aide a previous extension and the nurse aide did not complete the in-service education requirements during the previous extension period.

(b) Renewal of expired certificate of registration and NAR listing.

(1) HHSC renews the certificate of registration and changes the status of a listing from expired to active if HHSC receives and approves a request for renewal and an active status listing from a former nurse aide in accordance with this subsection.

(2) To request renewal and an active status listing, a former nurse aide must submit a written request with the documents required for renewal in accordance with §556.9(e) [~~§556.9(d)~~] of this chapter within five years after the former nurse aide's certificate of registration and listing expired. The former nurse aide must include with the request documentation of the former nurse aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former nurse aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former nurse aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former nurse aide must submit the requested documentation.

(5) HHSC approves a request for an active status listing submitted in accordance with this subsection if HHSC determines that:

(A) the former nurse aide meets the requirements for renewal described in §556.9(e) [~~§556.9(d)(1)~~ - ~~(4)~~] of this chapter;

(B) the former nurse aide is a military service member, military veteran, or military spouse;

(C) the former nurse aide has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and has

not committed an offense listed in THSC §250.006(b) during the five years before the date the former nurse aide submitted the initial license application; and

(D) the former nurse aide is not listed on the EMR.

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

Filed with the Office of the Secretary of State on March 23, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

CHAPTER 745. LICENSING
SUBCHAPTER F. BACKGROUND CHECKS
DIVISION 2. REQUESTING BACKGROUND CHECKS

26 TAC §§745.609, 745.611, 745.613, 745.615, 745.617

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.609, concerning What types of background checks are required for persons at my operation; §745.611, concerning Which persons at my operation require either a fingerprint-based criminal history check or a name-based Texas criminal history check; §745.613, concerning Which persons at my operation must have an out-of-state criminal history check, and out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check; §745.615, concerning What types of background checks are required for persons at listed family homes that only provide care to related children, employer-based child care operations, and shelter care operations; and §745.617, concerning How do I submit a request for a background check.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill 1061, 87th Legislature, Regular Session, 2021, which amends Sections 42.159 and 42.206 of the Texas Human Resources Code (HRC), relating to Small Employer-Based Child Care (SEBCC) Operations and Shelter Care Operations. Currently, persons required to have a background check at these operation types are only required to have a name-based Texas criminal history check. The amendments will now require most persons at these operations to submit fingerprints so a fingerprint-based criminal history check may be conducted. The change will allow HHSC Child Care Regulation (CCR) access to the Federal Bureau of Investigations (FBI) National Rap Back Service by receiving immediate notification of a change in a person's criminal history. The amendments will also make the criminal history background check requirements for SEBCC Operations and Shelter Care Operations more consistent with the criminal history background check requirements for other operation types that CCR regulates.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.609 (1) updates the rule so persons at SEBCC Operations and Shelter Care Operations will have background checks that are more consistent with the background checks required for other operation types that CCR regulates; (2) clarifies that persons at SEBCC Operations and Shelter Care Operations do not have to have a National Sex Offender Registry (NSOR) check (Note: A NSOR check is a name-based check that is different from the National Sex Offender Registry check that will be conducted through the fingerprint-based criminal history check.); and (3) updates a citation.

The proposed amendment to §745.611 (1) clarifies that most persons at SEBCC Operations and Shelter Care Operations will be required to submit fingerprints, so a fingerprint-based criminal history check may be conducted; and (2) updates a citation.

The proposed amendment to §745.613 deletes a citation that is not necessary and is confusing.

The proposed amendment to §745.615 clarifies that this rule regarding name-based Texas criminal history checks no longer applies to SEBCC Operations and Shelter Care Operations, because most persons required to have a background check at these operations will be required to have a fingerprint-based criminal history check.

The proposed amendment to §745.617 (1) updates the figure name; (2) clarifies that for persons at SEBCC Operations and Shelter Care Operations, the operation must submit a request for a background check online through the operation's Licensing account; and (3) defines acronyms to improve readability.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will 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 has also determined that there will be an adverse economic effect on small businesses and micro-businesses but not on rural communities. The proposed rules will require most persons at SEBCC Operations and Shelter Care Operations to submit fingerprints, so a fingerprint-based criminal history check can be conducted on these persons instead of a name-based

criminal history check. However, these operations may currently choose to obtain a fingerprint-based criminal history check instead of a name-based criminal history check on persons at their operation.

The Fiscal Year 2020 Child Day Care Data Book indicates there were 12 SEBCC Operations and 16 Shelter Care Operations with a total of approximately 190 staff. Since the average number of staff for each operation is less than seven persons, it is assumed that all 12 SEBCC Operations and 16 Shelter Care Operations are micro-businesses and small businesses. No rural communities have a license as a SEBCC Operation or Shelter Care Operation.

Out of 190 staff for these 28 operations, only 33 staff currently do not have a fingerprint-based criminal history check. These 33 staff will now be required to submit a set of fingerprints to the Texas Department of Public Safety (DPS) fingerprinting vendor. When a person submits fingerprints, there will be a one-time fingerprint-based criminal history check fee of approximately $40. This cost is paid directly to the DPS fingerprinting vendor. The fee is split between DPS, the FBI, and the DPS fingerprint vendor. None of the $40 fee goes to CCR or HHSC.

CCR does not have adequate information to determine whether the individual staff or the SEBCC Operation or Shelter Care Operation will pay for the $40 fee.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses and micro-businesses would not be consistent with ensuring the health and safety of children in the care of SEBCC Operations and Shelter Care Operations. The rules do not impact 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 are necessary to protect the health, safety, and welfare of the residents of Texas; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the safety of the children in the care of SEBCC Operations and Shelter Care Operations will be improved because more robust criminal history checks will be conducted on all staff in these operations.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because they may have to pay a one-time fingerprint-based criminal history check fee of $40.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Gerry.Williams@hhs.texas.gov.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 21R167" in the subject line.

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 Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendments affect Texas Government Code §531.0055 and HRC §42.159 and §42.206.

§745.609. What types of background checks are required for persons at my operation?

(a) Except as described in subsection (b) of this section, persons required to have a background check under §745.605 of this division (relating to For whom must I submit requests for background checks?) must have the following types of background checks:

(1) As further described in §745.611 of this division (relating to Which persons at my operation require either a fingerprint-based criminal history check or a name-based Texas criminal history check?), either a:

(A) Fingerprint-based criminal history check; or

(B) Name-based Texas criminal history check;

(2) A Central Registry check;

(3) If your operation is a child day-care operation that is not an employer-based child care operation or a shelter care operation, a National Sex Offender Registry check for persons who require a fingerprint-based criminal history check under §745.611(a)(1) of this division; and

(4) As further described in §745.613 of this division (relating to Which persons at my operation must have an out-of-state criminal history check, an out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check?), for certain persons, an:

(A) Out-of-state criminal history check;

(B) Out-of-state child abuse and neglect registry check; and

(C) Out-of-state sex offender registry check.

(b) This rule does not apply to listed family homes that only provide care to related children[~~, employer-based child care operations, and shelter care operations~~]. See §745.615 of this division (relating to What types of background checks are required for persons at listed family homes that only provide care to related children[~~, employer-based child care operations, and shelter care operations~~]?).

§745.611. Which persons at my operation require either a fingerprint-based criminal history check or a name-based Texas criminal history check?

(a) Except as described in subsections (b) and (c) of this section, a person required to have a background check under:

(1) §745.605(a)(1) - (6) of this division (relating to For whom must I submit requests for background checks?) must have a fingerprint-based criminal history check; or

(2) §745.605(a)(7) of this division is only required to have a name-based Texas criminal history check, except the person must have a fingerprint-based criminal history check if:

(A) The person has resided outside of Texas any time during the five-year period prior to the date you submit a request for a background check; or

(B) There is reason to believe the person has criminal history in another state.

(b) A person who is present at the operation to complete a skills practicum or receive observation requires a check described in subsection (a)(2) of this section if:

(1) The skills practicum or observation is a requirement for a high school or college child-care related course that the person is enrolled in at an accredited high school, college, or university;

(2) The person is paired with one or more qualified caregivers, one of whom must always be present when the person interacts with children or observes children; and

(3) The person is only present at the operation in order to fulfill the course requirement and not in any role that would require a fingerprint-based check. For example, the operation may not use the person to meet child-caregiver ratios.

(c) This rule does not apply to listed family homes that only provide care to related children[~~, employer-based child care operations, and shelter care operations~~]. See §745.615 of this division (relating to What types of background checks are required for persons at listed family homes that only provide care to related children[~~, employer-based child care operations, and shelter care operations~~]?).

§745.613. Which persons at my operation must have an out-of-state criminal history check, an out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check?

(a) Except as described in subsections (d) and (e) of this section, a person required to have a background check under §745.605 of this division (relating to For whom must I submit requests for background checks?) must have an out-of-state criminal history check, an out-of-state abuse and neglect registry check, and an out-of-state sex offender registry check:

(1) In each state where the person resided during the preceding five-year period, if the person has lived outside of Texas any time during the five-year period prior to the date you submit a request for a background check; or

(2) In each state where there is reason to believe the person has criminal history, has a child abuse or neglect history, or is registered as a sex offender.

(b) The out-of-state criminal history check must be a fingerprint-based criminal history check if the person currently resides in a state outside of Texas[~~,~~] but is employed at an operation regulated by Licensing.

(c) The CBCU will inform a person when the person requires any out-of-state checks. The person must ensure that the person's own out-of-state criminal history check and out-of-state child abuse and neglect registry check are provided to the CBCU. The CBCU will conduct the person's out-of-state sex offender registry check.

(d) A person does not have to have an out-of-state criminal history check if:

(1) The operation submitting the request for a background check is a residential child-care operation, including a child-placing agency, agency foster home, or general residential operation; or

(2) The state where the person resided during the preceding five-year period is participating in the FBI's National Fingerprint File (NFF) program.

(e) This rule does not apply to listed family homes that only provide care to related children, employer-based child care operations, and shelter care operations. [~~See §745.615 of this division (relating to What types of background checks are required for persons at listed family homes that only provide care to related children, employer-based child care operations, and shelter care operations?).~~]

§745.615. What types of background checks are required for persons at listed family homes that only provide care to related children[~~, employer-based child care operations, and shelter care operations~~]?

For listed family homes that only provide care to related children[~~, employer-based child care operations, and shelter care operations~~], persons required to have a background check under §745.605 of this division (relating to For whom must I submit requests for background checks?) must have the following types of background checks:

(1) A name-based Texas criminal history check with a Texas sex offender registry check, except the person must have a fingerprint-based criminal history check if:

(A) The person has resided outside of Texas any time during the five-year period prior to the date you submit a request for a background check; or

(B) There is reason to believe the person has criminal history in another state; and

(2) A Central Registry check.

§745.617. How do I submit a request for a background check?

(a) The process for submitting a request for a background check depends on the type of operation submitting the request:
Figure: 26 TAC §745.617(a)
[~~Figure: 40 TAC §745.617(a)~~]

(b) You do not have to submit a request for a background check for a person who requires a background check under this subchapter because of the person's responsibilities as a Texas Department of Family and Protective Services (DFPS) [~~DFPS~~] or Licensing employee or volunteer. The person will have a background check conducted by DFPS or the Texas Health and Human Services Commission [~~HHSC~~] as part of the person's application to become an employee or volunteer.

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) 438-3269

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER F. RATE REVIEW FOR HEALTH BENEFIT PLANS

28 TAC §§3.501 - 3.507

The Texas Department of Insurance (TDI) proposes new Subchapter F, consisting of §§3.501 - 3.507, concerning the rate review process for individual and small group major medical coverage, to be added to 28 TAC Chapter 3. This new subchapter implements Insurance Code Chapter 1698, as added by Senate Bill 1296, 87th Legislature, 2021.

EXPLANATION. Insurance Code Chapter 1698 requires the Commissioner to establish a process under which TDI will review health benefit plan rates and rate changes for compliance with state and federal law, including rules establishing geographic rating areas. Proposed Subchapter F establishes a process to review the rates for individual and small group major medical coverage as provided by Chapter 1698. The new subchapter includes §§3.501 - 3.507. These sections state the rule's purpose and applicability, identify the rating standards, establish geographic rating areas, and provide guidance to address certain additional factors and requirements related to the review process and public disclosure requirements.

Federal law requires that federal regulators review certain health insurance rate increases if states do not do so. Prior to the passage of SB 1296, federal regulators have been reviewing these rates because Texas law had not provided a mechanism for state review since 2013. Insurance Code Chapter 1698 returns the rate review process to the state, consistent with federal rate review rules in 45 CFR Part 154.

TDI received five separate comments on an informal draft of this rule, which was posted on TDI's website on October 19, 2021. Multiple commenters requested that the proposed new subchapter be drafted to include a common cost-sharing reduction (CSR) adjustment to address the federal government's discontinuance of CSR reimbursements in 2017. Regulators in 45 states directed issuers to make this type of adjustment, commonly known as "actuarial loading" or "silver loading," in response to the defunding of CSRs. TDI considered those comments when drafting this proposal.

The proposed sections of the new subchapter are described in the following paragraphs.

Section 3.501. Section 3.501(a) describes the purpose of the subchapter, which is to implement Insurance Code Chapter 1698 and establish an effective rate review program consistent with 45 CFR §154.301, concerning CMS's Determinations of Effective Rate Review Programs.

Subsection (b) explains that the subchapter applies to plans subject to Insurance Code Chapter 1698, while subsection (c) clarifies that the subchapter does not apply to (1) short-term limited-duration insurance; (2) grandfathered health plan coverage; and (3) individual limited scope plans, including dental benefit plans and vision benefit plans. The plans listed under subsection (c) are not subject to the same federal rating standards and are reviewed instead for compliance with other existing state rating standards, including Insurance Code Chapter 560; Insurance Code Chapter 1501, Subchapter E; and 28 TAC §26.11.

Section 3.502. Section 3.502 defines the following terms for use in the subchapter: "actuarial value (AV)," "cost-sharing reductions (CSRs)," "essential health benefits (EHBs)," "federal medical loss ratio standard," "HHS," "issuer," "index rate," "plan," "product," "qualified actuary," "single risk pool," and "Unified Rate Review Template (URRT)."

Section 3.503. Section 3.503 requires that all rate filings under Subchapter F comply with all applicable state and federal requirements, including specified provisions from the Insurance Code, United States Code, and Code of Federal Regulations.

Section 3.504. Section 3.504 addresses how rates may vary based on geography. Insurance Code Chapter 1698 grants the Commissioner the authority to implement rules establishing geographic rating areas to use when reviewing the rates in compliance with 42 USC §300gg.

Subsection (a) provides that issuers may vary the rates based on rating areas, which are determined using the policyholder's or contract holder's address.

Subsection (b) establishes 27 rating areas that issuers must use for rates, beginning in 2023. Each rating area consists of a certain number of Texas counties in compliance with 45 CFR §147.102(b)(3). Currently, Texas uses the federal default rating areas, composed of 25 Metropolitan Statistical Areas and one area that includes all rural areas. The proposed new rating areas are based around health care districts and the regions defined by the Texas Health and Human Services Commission. The newly established rating areas could have a positive effect on rural communities by generating competition in areas where a limited variety of health plans is currently available.

Section 3.505. Section 3.505(a) prohibits an issuer from using a rate with respect to a plan if the rate has not been filed with TDI for review, does not comply with applicable rating standards, or where the rate filing has been withdrawn.

Subsection (b) requires that issuers submit an annual rate filing no later than June 15 for any individual or small group market plan that is to be issued on or after January 1 in the following calendar year. Subsection (b) also prohibits an issuer from modifying an annual rate filing later than October 1 prior to the calendar year for which the filing was submitted.

Subsection (c) applies only to small group issuers and allows them to submit a rate filing for a quarterly rate change so long as the filing is submitted at least 105 days before the effective date of the rate change.

Subsection (d) requires that rate filings include the index rate for the single risk pool and reflect every product and plan that is part of the single risk pool in the applicable market. Subsection

(d) also advises that issuers are not required to enter CSR plan variations separately.

Subsection (e) requires issuers to submit rate filings under Subchapter F through the electronic system designated by TDI in accordance with any technical instructions provided for the electronic system. The electronic system currently in use is the System for Electronic Rate and Form Filings (SERFF); additional technical guidance on filing is contained in TDI rules in 28 TAC Chapter 3, Subchapter A, and in 28 TAC §11.301.

Subsection (f) requires that rate filings made under Subchapter F include the following: (1) the URRT (Part I); (2) written descriptions justifying rate increases of 15% or more in a 12-month period; (3) rating filing documentation, including an actuarial memorandum signed by a qualified actuary; (4) a rates table that identifies the applicable rate for each plan depending on an individual's rating area, tobacco use, and age; (5) an enrollment spreadsheet that contains the information specified in subparagraphs (A) through (C) of the paragraph; and (6) an actuarial value (AV) and cost-sharing factor spreadsheet.

The AV and cost-sharing factor spreadsheet included with each rate filing must include a certain induced-demand factor based on the plan type (e.g., bronze plans, silver plans, gold plans, and platinum plans). The spreadsheet must also include a CSR adjustment factor of 1.35, which is applicable to individual silver plans on the exchange. In setting this factor, TDI considered the different CSR plan variations with respect to (1) the eligibility criteria for CSRs; (2) the potential distribution of enrollees; (3) the maximum actuarial value that may be provided across all silver plans; and (4) variation in induced demand. Before adopting a final CSR adjustment factor, TDI will consider comments on the proposed factor and whether it should be modified.

Subsection (g) states that TDI will publish templates on its website that issuers may use to submit the required data.

Subsection (h) requires that an issuer provide any additional information needed to evaluate the rate filing upon TDI's request.

Subsection (i) requires an issuer to submit current and prior year data on enrollment, premiums, and claims by June 15, when the issuer does not intend to issue a plan that would require a rate filing for the next calendar year but has enrollment in a plan that is subject to Subchapter F in the current or prior year. This data enables TDI to consider medical claims trends and understand the impact of a change to an issuer's market participation.

Section 3.506. Section 3.506(a) provides that TDI will evaluate whether the issuer has provided sufficient data and documentation upon receipt of a rate filing under Subchapter F and may request additional information as necessary to make a determination on the filing. The issuer must provide any additional information requested within 10 business days of the request. If TDI requests additional information but the issuer fails to provide the requested information or establish a plan to provide the information that is acceptable to TDI, TDI will deem the filing withdrawn and notify the issuer of the withdrawal.

Subsections (b) and (c) explain the factors TDI will review, which include (1) the reasonableness of the assumptions used by the issuer to develop the rates and the validity of the historical data underlying the assumptions; (2) the issuer's data related to past projections and actual experience; (3) the reasonableness of assumptions used by the issuer to estimate the rate impact of the reinsurance and risk adjustment programs; (4) the issuer's data related to implementation and ongoing utilization of certain factors as required by 42 USC Subchapter XXV, Part A, concerning Individual and Group Market Reforms; (5) factors specified under the Insurance Code; (6) factors listed under 45 CFR §154.301(a)(4); and (7) whether the issuer complies with rating standards under §3.503.

Subsection (d) provides that TDI will also consider the factors from Insurance Code §1698.052(c) when reviewing rates for a qualified health plan. Those factors include:

- the purchasing power of consumers who are eligible for a premium subsidy under federal law;

- if the plan is in the silver level, whether the rate is appropriate in relation to the rates charged for qualified health plans offering different levels of coverage, accounting for any funding or lack of funding for CSRs and the covered benefits for each level of coverage; and

- whether the plan issuer used the induced-demand factors developed by the Centers for Medicare and Medicaid Services (CMS) for the level of coverage offered by the plan or any state-specific induced-demand factors established by TDI.

Subsection (e) provides that the standard for determining that a rate increase is unreasonable is whether the rate is excessive, unjustified, or unfairly discriminatory. Subsection (e)(1) explains that a rate filing is excessive if it causes the premium charged for the health insurance coverage to be unreasonably high in relation to the benefits provided under the coverage.

Subsection (e)(2) explains that a rate increase is unjustified if the issuer provides incomplete or inadequate information or otherwise does not provide a basis for TDI to determine the reasonableness of the rate increase.

Subsection (e)(3) explains that a rate increase is unfairly discriminatory based on Insurance Code §560.002(c), which provides that a rate is unfairly discriminatory if it is not based on sound actuarial principles; does not bear a reasonable relationship to the expected loss and expense experience among risks; or is based wholly or partly on the race, creed, color, ethnicity, or national origin of the policyholder or insured.

Subsection (f) provides that a rate will be deemed compliant at the expiration of 60 days from the date the rate is filed, unless the filing is withdrawn or TDI has determined that the rate is noncompliant or granted an extension. If TDI has not finalized its determination before the 60th day, TDI may extend the period by up to 10 days, with notice to the issuer. The issuer may also extend the time frame for review or waive the right to deem the rate compliant.

Subsection (g) provides that TDI will identify deficiencies for any rate filing that does not comply with the applicable rating standards and ask for corrections. If the issuer fails to make the necessary corrections within 10 business days or establish a plan that is acceptable to TDI to address the identified deficiencies, the filing will be determined to be noncompliant and TDI will notify the issuer of the determination.

Subsection (h) explains that TDI will communicate objections to a rate increase and give the issuer an opportunity to provide additional information or modify the filing prior to TDI determining that the rate increase is unreasonable. Subsection (h) also describes what will happen when TDI determines that a rate increase is unreasonable but that the issuer is legally permitted to implement the rate increase. In this case, TDI will issue a final determination and brief explanation. After receipt of this, the issuer is

required to submit a final justification for the rate increase and prominently post information concerning the rate increase on its website, consistent with 45 CFR §154.230, which requires that the issuer keep the posting on its website for at least three years.

Section 3.507. Section 3.507 addresses the public disclosure and comments information related to rate increases, consistent with 45 CFR §154.301(b). Subsection (a) provides that information related to a proposed annual rate increase of 15% or more will be made publicly available on a website published by CMS.

Subsection (b) supplies the TDI email address to which public comments concerning proposed rate increases may be sent.

Subsection (c) states that final rate increases will be publicly available on a website published by CMS no later than the first day of the annual open enrollment period in the individual market for the applicable calendar year.

Subsection (d) provides that TDI will make information related to proposed or final rate filings publicly available in a manner consistent with federal law.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of Regulatory Initiatives in the Life and Health Division, has determined that during each year of the first five years the proposed new sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new sections, other than that imposed by the statute. Ms. Bowden made this determination because the proposed new sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new sections.

Ms. Bowden does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new sections are in effect, Ms. Bowden expects that enforcing and administering the proposed new sections will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 1698 and 45 CFR Part 154.

Ms. Bowden believes that the proposed new sections will have several additional public benefits. The proposed new sections will provide issuers with greater certainty regarding rating standards, which improves compliance and adds stability to the marketplace. The proposed new geographic rating areas will have the benefit of allowing issuers to more accurately price products to better reflect the costs in the local health care markets where consumers are likely to seek care. This benefit could increase competition and consumer choice in rural areas.

In addition, the new sections increase consumer purchasing power by requiring issuers to apply a uniform CSR adjustment factor. As explained in the author's statement of intent, SB 1296 sought to remedy a misalignment in premiums across the different metal tiers of coverage that resulted from the discontinuance of federal payments for the CSRs that issuers must provide to eligible consumers. *See* Senate Research Center, Bill Analysis, SB 1296, 87th Legislature, 2021. To address the discontinuance of federal subsidies, silver-level plans should be priced to reflect the cost of providing coverage that has a higher actuarial value. However, issuers have not taken a uniform approach in adjusting premiums. By requiring issuers to use a uniform CSR adjustment factor, the rule (1) ensures that the federal tax credits will be based on appropriately priced silver-level plans, and (2) prevents consumers in other metal tiers from absorbing the expenses of the CSRs they do not benefit from. TDI expects that the uniformity will maximize the federal tax credits available to Texas consumers, increasing purchasing power and health coverage affordability. By increasing consumers' purchasing power, issuers will also benefit from increased enrollment in the Texas individual health insurance marketplace.

Ms. Bowden expects that the proposed new sections will likely not generate additional costs to health benefit plan issuers. Issuers are currently required to submit rating information to both TDI for state review and CMS for federal review. By establishing an effective rate review process, TDI will have the ability to review rates for compliance with state and federal requirements. The responsibility of performing this task will be transferred from CMS to TDI; issuers will have to file and interact with only one regulatory entity, presumably saving time and costs.

The proposed rules require issuers to (1) use the updated geographic rating areas, (2) file annually with TDI rates that include documentation demonstrating compliance with applicable rating standards, (3) include data on enrollment and medical claim trends in annual filings, (4) report data on enrollment in silver-plan variations, and (5) use a uniform CSR adjustment factor. The use of updated geographic rating areas ensures that factors align with the health care market where rural enrollees are likely to seek care. Implementing the proposed geographic rating areas is not expected to create a cost for issuers. The documentation within annual filings and the collection of data are necessary for TDI to fully assess the appropriateness of the rates and consider all factors identified in Insurance Code §1698.052(c) and (d). Specifically, the information required to be submitted under §3.505(f)(1) - (5) is already required to be submitted under law or other regulations. The information required to be submitted under §3.505(f)(6) is not currently required, but it is necessary so that TDI can fully consider the factors referenced in Insurance Code §1698.052(c). Issuers already have this information, so there should be no cost to produce and submit it with the rate filing. Since issuers are already filing rates with TDI to review compliance with state requirements, the proposal does not require more rate filings or additional fees that issuers are expected to pay.

Section 3.505(f)(6)(B)(iii) also requires issuers to use a CSR adjustment factor of 1.35 for silver plans on the exchange. Requiring issuers to use this uniform factor will ensure that federal tax credits will be based on appropriately priced silver-level plans and will also prevent consumers in other metal tiers from absorbing the expenses of the CSRs they do not benefit from. TDI believes that most issuers already use a CSR adjustment factor, and requiring a uniform factor is not expected to increase the workload involved in formulating compliant rates. TDI does not have information on the adjustment factors currently being used by many issuers, so TDI cannot determine the precise impact to issuers for changing to the proposed uniform CSR adjustment factor, but TDI does not anticipate a cost increase. Even if there is a cost increase, TDI anticipates that it will be offset by the cost savings based on issuers no longer having to interact with two regulatory entities under the rule and the benefits to consumers that will no longer have to absorb the costs of CSRs.

TDI also estimates that there are no measurable additional costs in the actual submission of the electronic form over the internet.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new sections will not have an adverse economic effect on small or micro businesses, or on rural communities. Rural communities

might benefit from the proposed new geographic rating areas because such communities were previously placed into a single rating area, which resulted in the rates not always being reflective of the market for each community. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal likely does not impose a cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045. Even if there were some costs attributable to the rulemaking, the proposal is necessary to implement SB 1296 and to receive a source of federal funds.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new sections are in effect, the proposed rules:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will increase the number of individuals subject to the rules' applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 9, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2833 at 2:00 p.m., central time, on Monday, April 18, 2022, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. TDI proposes §§3.501 - 3.507 under Insurance Code §§1698.051, 1698.052, 1701.060, and 36.001.

Insurance Code §1698.051 requires that the Commissioner by rule establish a process under which the Commissioner will review individual and small group health benefit plan rates and rate changes for compliance with Chapter 1698 and other applicable state and federal laws, including 42 USC §§300gg, 300gg-94, and 18032(c) and those sections' implementing regulations, including rules establishing geographic rating areas.

Insurance Code §1698.052(b) - (d) authorize the Commissioner to adopt rules and provide guidance regarding requirements related to individual health benefit plan rates.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 3.501 - 3.507 implement Insurance Code Chapter 1698.

§3.501. Purpose and Applicability.

(a) The purpose of this subchapter is to implement Insurance Code Chapter 1698, concerning Rates for Certain Coverage, and to establish an effective rate review program in the individual and small group markets, consistent with 45 CFR §154.301, concerning CMS's Determinations of Effective Rate Review Programs.

(b) This subchapter applies to a plan that is subject to Insurance Code Chapter 1698.

(c) This subchapter does not apply to:

(1) "short-term limited-duration insurance" as defined in Insurance Code Chapter 1509, concerning Short-Term Limited-Duration Insurance;

(2) "grandfathered health plan coverage" as defined by 45 CFR §147.140, concerning Preservation of Right to Maintain Existing Coverage; or

(3) individual limited scope plans, including but not limited to dental benefit plans and vision benefit plans.

§3.502. Definitions.

For purposes of this subchapter, the following terms have the meanings indicated, except where the context clearly indicates otherwise:

(1) Actuarial value (AV)--As defined in 45 CFR §156.20, concerning Definitions.

(2) Cost-sharing reductions (CSRs)--As defined in 45 CFR §155.20, concerning Definitions.

(3) Essential health benefits (EHBs)--Health benefits contained in the applicable "essential health benefits package" as that term is defined in 45 CFR §156.20.

(4) Federal medical loss ratio standard--The applicable medical loss ratio standard for the market segment involved, determined under subpart B of 45 CFR part 158, concerning Issuer Use of Premium Revenue: Reporting and Rebate Requirements.

(5) HHS--The U.S. Department of Health and Human Services.

(6) Issuer--An insurance company or health maintenance organization that issues a plan that is subject to Insurance Code Chapter 1698, concerning Rates for Certain Coverage.

(7) Index rate--A rate based on the total combined claims costs for providing essential health benefits within the single risk pool of the applicable market.

(8) Plan--As defined in 45 CFR §144.103, concerning Definitions.

(9) Product--As defined in 45 CFR §154.102, concerning Definitions.

(10) Qualified actuary--An actuary who is certified by the American Academy of Actuaries to meet the U.S. Qualification Standards.

(11) Single risk pool--With respect to a particular issuer and for the purposes of considering claims experience and developing an index rate, the grouping of all members enrolled in individual market plans or small group market plans that are subject to this chapter, consistent with 45 CFR §156.80, concerning Single Risk Pool.

(12) Unified Rate Review Template (URRT)--A spreadsheet that comprises Part I of the rate filing justification, as described in 45 CFR §154.215, concerning Submission of Rate Filing Justification.

§3.503. Rating Standards.

A rate filing filed under this subchapter must comply with all applicable state and federal requirements, including:

(1) Insurance Code Chapter 560, concerning Prohibited Rates;

(2) Insurance Code §843.2071, concerning Notice of Increase in Charge for Coverage;

(3) Insurance Code §1201.109, concerning Notice of Rate Increase for Major Medical Expense Insurance Policy;

(4) Insurance Code Chapter 1271, Subchapter F, concerning Schedule of Charges;

(5) Insurance Code §1501.215, concerning Reporting Requirements, and §1501.216, concerning Premium Rates: Notice of Increase;

(6) Insurance Code Chapter 1698, concerning Rates for Certain Coverage;

(7) 42 USC §300gg, concerning Fair Health Insurance Premiums;

(8) 42 USC §300gg-94, concerning Ensuring That Consumers Get Value for Their Dollars;

(9) 42 USC §18032(c), concerning Consumer Choice;

(10) 45 CFR §147.102, concerning Fair Health Insurance Premiums;

(11) 45 CFR Part 154, concerning Health Insurance Issuer Rate Increases: Disclosure and Review Requirements; and

(12) 45 CFR §156.80, concerning Single Risk Pool.

§3.504. Geographic Rating Areas.

(a) An issuer may vary rates based on rating area, which is determined:

(1) in the individual market, using the primary policyholder's or contract holder's address; and

(2) in the small group market, using the group policyholder's or contract holder's principal business address.

(b) For the purposes of this subchapter, rating areas for plan or policy years beginning on or after January 1, 2023, are established as follows.

(1) Rating area 1 (Abilene) consists of the following Texas counties:

(A) Brown;

(B) Callahan;

(C) Coleman;

(D) Comanche;

(E) Eastland;

(F) Fisher;

(G) Haskell;

(H) Jones;

(I) Kent;

(J) Mitchell;

(K) Nolan;

(L) Runnels;

(M) Scurry;

(N) Shackelford;

(O) Stephens;

(P) Stonewall;

(Q) Taylor; and

(R) Throckmorton.

(2) Rating area 2 (Amarillo) consists of the following Texas counties:

(A) Armstrong;

(B) Briscoe;

(C) Carson;

(D) Castro;

(E) Childress;

(F) Collingsworth;

(G) Dallam;

(H) Deaf Smith;

(I) Donley;

(J) Gray;

(K) Hall;

(L) Hansford;

(M) Hartley;

(N) Hemphill;

(O) Hutchinson;

(P) Lipscomb;

(Q) Moore;

(R) Ochiltree;

(S) Oldham;

(T) Parmer;

(U) Potter;

(V) Randall;

(W) Roberts;

(X) Sherman;

(Y) Swisher; and

(Z) Wheeler.

(3) Rating area 3 (Austin) consists of the following Texas counties:

(A) Bastrop;

(B) Blanco;

(C) Burnet;

(D) Caldwell;

(E) Fayette;

(F) Hays;

(G) Lee;

(H) Llano;

(I) Travis; and

(J) Williamson.

(4) Rating area 4 (Beaumont) consists of the following Texas counties:

(A) Angelina;

(B) Hardin;

(C) Houston;

(D) Jasper;

(E) Jefferson;

(F) Nacogdoches;

(G) Newton;

(H) Orange;

(I) Polk;

(J) Sabine;

(K) San Augustine;

(L) San Jacinto;

(M) Shelby;

(N) Trinity; and

(O) Tyler.

(5) Rating area 5 (Brownsville) consists of the following Texas counties:

(A) Cameron;

(B) Kenedy; and

(C) Willacy.

(6) Rating area 6 (College Station) consists of the following Texas counties:

(A) Brazos;

(B) Burleson;

(C) Grimes;

(D) Leon;

(E) Madison;

(F) Milam;

(G) Robertson; and

(H) Washington.

(7) Rating area 7 (Corpus Christi) consists of the following Texas counties:

(A) Aransas;

(B) Bee;

(C) Jim Wells;

(D) Kleberg;

(E) Live Oak;

(F) Nueces;

(G) Refugio; and

(H) San Patricio.

(8) Rating area 8 (Dallas) consists of the following Texas counties:

(A) Collin;

(B) Dallas;

(C) Ellis;

(D) Hunt;

(E) Kaufman;

(F) Navarro; and

(G) Rockwall.

(9) Rating area 9 (El Paso) consists of the following Texas counties:

(A) Brewster;

(B) Culberson;

(C) El Paso;

(D) Hudspeth;

(E) Jeff Davis; and

(F) Presidio.

(10) Rating area 10 (Houston) consists of the following Texas counties:

(A) Galveston; and

(B) Harris.

(11) Rating area 11 (Killeen/Temple) consists of the following Texas counties:

(A) Bell;

(B) Coryell;

(C) Hamilton;

(D) Lampasas;

(E) Mills; and

(F) San Saba.

(12) Rating area 12 (Laredo) consists of the following Texas counties:

(A) Duval;

(B) Jim Hogg;

(C) McMullen;

(D) Webb; and

(E) Zapata.

(13) Rating area 13 (Longview) consists of the following Texas counties:

(A) Gregg;

(B) Harrison;

(C) Marion;

(D) Panola;

(E) Rusk; and

(F) Upshur.

(14) Rating area 14 (Lubbock) consists of the following Texas counties:

(A) Bailey;

(B) Cochran;

(C) Crosby;

(D) Dickens;

(E) Floyd;

(F) Garza;

(G) Hale;

(H) Hockley;

(I) Lamb;

(J) Lubbock;

(K) Lynn;

(L) Motley;

(M) Terry; and

(N) Yoakum.

(15) Rating area 15 (McAllen) consists of the following Texas counties:

(A) Brooks;

(B) Hidalgo; and

(C) Starr.

(16) Rating area 16 (Midland/Odessa) consists of the following Texas counties:

(A) Andrews;

(B) Borden;

(C) Crane;

(D) Dawson;

(E) Ector;

(F) Gaines;

(G) Glasscock;

(H) Howard;

(I) Loving;

(J) Martin;

(K) Midland;

(L) Pecos;

(M) Reeves;

(N) Terrell;

(O) Upton;

(P) Ward; and

(Q) Winkler.

(17) Rating area 17 (San Angelo) consists of the following Texas counties:

(A) Coke;

(B) Concho;

(C) Crockett;

(D) Irion;

(E) Kimble;

(F) Mason;

(G) McCulloch;

(H) Menard;

(I) Reagan;

(J) Schleicher;

(K) Sterling;

(L) Sutton; and

(M) Tom Green.

(18) Rating area 18 (San Antonio) consists of the following Texas counties:

(A) Atascosa;

(B) Bandera;

(C) Bexar;

(D) Comal;

(E) Dimmit;

(F) Edwards;

(G) Frio;

(H) Gillespie;

(I) Gonzales;

(J) Guadalupe;

(K) Kendall;

(L) Kerr;

(M) Kinney;

(N) La Salle;

(O) Maverick;

(P) Medina;

(Q) Real;

(R) Uvalde;

(S) Val Verde;

(T) Wilson; and

(U) Zavala.

(19) Rating area 19 (Sherman/Dennison) consists of the following Texas counties:

(A) Cooke;

(B) Fannin; and

(C) Grayson.

(20) Rating area 20 (Texarkana) consists of the following Texas counties:

(A) Bowie;

(B) Camp;

(C) Cass;

(D) Delta;

(E) Franklin;

(F) Hopkins;

(G) Lamar;

(H) Morris;

(I) Red River; and

(J) Titus.

(21) Rating area 21 (Tyler) consists of the following Texas counties:

(A) Anderson;

(B) Cherokee;

(C) Henderson;

(D) Rains;

(E) Smith;

(F) Van Zandt; and

(G) Wood.

(22) Rating area 22 (Victoria) consists of the following Texas counties:

(A) Calhoun;

(B) DeWitt;

(C) Goliad;

(D) Jackson;

(E) Karnes;

(F) Lavaca; and

(G) Victoria.

(23) Rating area 23 (Waco) consists of the following Texas counties:

(A) Bosque;

(B) Falls;

(C) Freestone;

(D) Hill;

(E) Limestone; and

(F) McLennan.

(24) Rating area 24 (Wichita Falls) consists of the following Texas counties:

(A) Archer;

(B) Baylor;

(C) Clay;

(D) Cottle;

(E) Foard;

(F) Hardeman;

(G) Jack;

(H) King;

(I) Knox;

(J) Montague;

(K) Wichita;

(L) Wilbarger; and

(M) Young.

(25) Rating area 25 (Fort Worth) consists of the following Texas counties:

(A) Denton;

(B) Erath;

(C) Hood;

(D) Johnson;

(E) Palo Pinto;

(F) Parker;

(G) Somervell;

(H) Tarrant; and

(I) Wise.

(26) Rating area 26 (Houston SW) consists of the following Texas counties:

(A) Austin;

(B) Brazoria;

(C) Colorado;

(D) Fort Bend;

(E) Matagorda;

(F) Waller; and

(G) Wharton.

(27) Rating area 27 (Houston NE) consists of the following Texas counties:

(A) Chambers;

(B) Liberty;

(C) Montgomery; and

(D) Walker.

§3.505. Required Rate Filings.

(a) An issuer may not use a rate with respect to a plan if:

(1) the issuer has not filed the rate with TDI for review;

(2) the rate filing does not comply with the standards in §3.503 of this title (relating to Rating Standards); or

(3) the rate filing has been withdrawn.

(b) Each issuer must submit an annual rate filing no later than June 15 for any individual or small group market plan that will be issued effective on or after January 1 in the following calendar year. A small group issuer may include scheduled quarterly trend increases within the annual rate filing. An issuer may have only one active annual single risk pool rate filing in each market. An issuer may not modify an annual rate filing later than October 1 prior to the calendar year for which the filing was submitted.

(c) A small group issuer may submit a rate filing for a quarterly rate change that takes effect on April 1, July 1, or October 1. A small group issuer may have only one active quarterly single risk pool rate filing at a given time. Notwithstanding §26.11 of this title (relating to Restrictions Relating to Premium Rates), a small group issuer must submit a quarterly rate filing at least 105 days before the effective date of the rate change.

(d) A rate filing must include the index rate for the single risk pool and reflect every product and plan that is part of the single risk pool in the applicable market. Issuers are not required to enter CSR plan variations separately.

(e) Rate filings made under this subchapter must be submitted through the electronic system designated by TDI, according to any technical instructions provided for the electronic system and consistent with the rules and procedures in Chapter 3, Subchapter A, of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) and §11.301 of this title (relating to Filing Requirements).

(f) Rate filings made under this subchapter must include the following:

(1) the URRT (Part I);

(2) for a rate increase that is 15% or more within a 12-month period that begins on January 1, as determined by 45 CFR §154.200(b) and (c), concerning Rate Increases Subject to Review, a written description justifying the rate increase (Part II) that complies with 45 CFR §154.215(e), concerning Submission of Rate Filing Justification;

(3) rating filing documentation (Part III) that complies with 45 CFR §154.215(f) and that includes an unredacted actuarial memorandum signed by a qualified actuary;

(4) a rates table that identifies the applicable rate for each plan, depending on an individual's rating area, tobacco use, and age;

(5) an enrollment spreadsheet that contains, with respect to each county:

(A) the number of covered lives, as of March 31 of the current year, that are enrolled in each of the following plan types, separated on the basis of whether the enrollment is through the federal exchange or off-exchange:

(i) catastrophic plans;

(ii) bronze plans;

(iii) silver plans, separated as follows:

(I) silver plans with an AV of 70%;

(II) silver plans with an AV of 73%;

(III) silver plans with an AV of 87%;

(IV) silver plans with an AV of 94%; and

(V) silver plans with an AV of 100%;

(iv) gold plans; and

(v) platinum plans;

(B) whether the plan is available in the county in the current calendar year; and

(C) whether the plan will be available in the county in the next calendar year; and

(6) an AV and cost-sharing factor spreadsheet that contains:

(A) the plan ID specified in the URRT; and

(B) the component factors of an AV and cost-sharing design of plan field in the URRT, which should not include adjustments that account for the morbidity of the population expected to enroll in the plan, including:

(i) the AV of the plan, calculated consistent with 45 CFR §156.135, concerning AV Calculation for Determining Level of Coverage;

(ii) the induced-demand factor of 1.00 for bronze plans, 1.03 for silver plans, 1.08 for gold plans, and 1.15 for platinum plans; and

(iii) for individual silver plans on the exchange, a CSR adjustment factor of 1.35, that accounts for the average costs attributable to CSRs, to the extent that issuers are not otherwise being reimbursed for those costs. If issuers are being reimbursed for those costs by HHS, consistent with 42 USC §18071, concerning Reduced Cost-Sharing for Individuals Enrolling in Qualified Health Plans, then the CSR adjustment factor would not apply.

(g) Issuers may submit data using the templates available on TDI's website at www.tdi.texas.gov/health/ratereview.html.

(h) On request from TDI, an issuer must provide any additional information needed to evaluate the rate filing.

(i) An issuer that does not intend to issue a plan that would require a rate filing for the next calendar year, but that has enrollment in a plan that is subject to this subchapter in the current year or the prior year, must submit the data for such plan under paragraphs (1) and (2) of this subsection, as applicable, to TDI no later than June 15. For example, in June of 2022, an issuer must submit data under paragraph (1) of this subsection for the 2021 calendar year, and data under paragraph (2) of this subsection for the first five months of calendar year 2022. An issuer that does not have data to submit under paragraph (2) of this subsection is still required to submit data under paragraph (1) of this subsection.

(1) For prior year cumulative data, an issuer must submit:

(A) allowed claim costs, defined as total payments made under the plan to health care providers on behalf of covered members and including payments made by the issuer, member cost-sharing, cost-sharing paid by HHS on behalf of low-income members, and net payments from any federal or state reinsurance arrangement or program;

(B) incurred claim costs, defined as allowed claim costs as specified in subparagraph (A) of this paragraph, less member cost-sharing, cost-sharing paid by HHS on behalf of low-income members, and any net payments from a federal or state reinsurance arrangement;

(C) earned premium; and

(D) member months.

(2) For current year cumulative data through May 31, an issuer must submit:

(A) earned premium;

(B) member months; and

(C) the enrollment spreadsheet required under subsection (f)(5) of this section.

§3.506. Review of Rate Filings.

(a) Upon receipt of a rate filing under this subchapter, TDI will evaluate whether the issuer has provided sufficient data and documentation for TDI to make the determinations specified in this section. If the level of detail provided by the issuer under §3.505 of this title (relating to Required Rate Filings) does not provide a sufficient basis for TDI to make a determination, TDI will request additional information as necessary. The issuer must provide the requested information within 10 business days of the request. If the issuer fails to provide the requested information or establish a plan that is acceptable to TDI to provide the information, TDI will deem the filing withdrawn and notify the issuer of the withdrawal.

(b) In reviewing rates filed under this subchapter, TDI will examine:

(1) the reasonableness of the assumptions used by the issuer to develop the rates and the validity of the historical data underlying the assumptions;

(2) the issuer's data related to past projections and actual experience;

(3) the reasonableness of assumptions used by the issuer to estimate the rate impact of the reinsurance and risk adjustment programs under 42 USC §18061, concerning Transitional Reinsurance Program for Individual Market in Each State, and 42 USC §18063, concerning Risk Adjustment; and

(4) the issuer's data related to implementation and ongoing utilization of a market-wide single risk pool, essential health benefits, actuarial values, and other market reform rules as required by 42 USC Subchapter XXV, Part A, concerning Individual and Group Market Reforms.

(c) In reviewing rates filed under this subchapter, TDI will consider the following factors to the extent applicable to the filing under review:

(1) the factors specified in Insurance Code §1698.052(b) and (d), concerning Additional Rules and Guidance Related to Individual Health Plan Rates;

(2) the factors listed in 45 CFR §154.301(a)(4), concerning CMS's Determinations of Effective Rate Review Programs; and

(3) whether the issuer complies with the rating standards provided under §3.503 of this title (relating to Rating Standards).

(d) In reviewing rates for a qualified health plan, TDI will also consider the factors specified in Insurance Code §1698.052(c).

(e) A rate increase is unreasonable if, based on the criteria identified in this subsection, the rate is excessive, unjustified, or unfairly discriminatory.

(1) A rate increase is excessive if it causes the premium charged for the health insurance coverage to be unreasonably high in relation to the benefits provided under the coverage. In determining whether the rate increase causes the premium charged to be unreasonably high in relationship to the benefits provided, TDI will consider:

(A) whether the rate increase results in a projected medical loss ratio below the federal medical loss ratio standard in the applicable market to which the rate increase applies, after accounting for any adjustments allowable under federal law;

(B) whether one or more of the assumptions on which the rate increase is based is not supported by substantial evidence; and

(C) whether the choice of assumptions or combination of assumptions on which the rate increase is based is unreasonable.

(2) A rate increase is unjustified if the issuer provides data or documentation that is incomplete, inadequate, or otherwise does not provide a basis upon which the reasonableness of an increase may be determined.

(3) A rate increase is unfairly discriminatory as described by Insurance Code §560.002(c), concerning Use of Certain Rates Prohibited; Rate Requirements.

(f) A rate will be deemed compliant at the expiration of 60 days from the filing of the rate, unless the filing is withdrawn or TDI has determined that the rate is noncompliant or granted an extension as described below. If TDI has not finalized a determination before the 60th day, TDI may extend the 60-day period by not more than 10 days if TDI provides notice of the extension to the issuer. Notwithstanding anything else in this subsection, the issuer may extend the time frame for TDI's review or waive the right to deem the rate compliant.

(g) If a rate filing fails to comply with the rating standards provided under §3.503 of this title, TDI will identify the deficiency and ask for corrections. If within 10 business days the issuer fails to either make the necessary corrections or establish a plan that is acceptable to TDI to address the identified deficiencies, TDI will deem the filing to be noncompliant and notify the issuer of the determination.

(h) Before making a determination that a rate increase is unreasonable, TDI will communicate its objections to the issuer and provide an opportunity for the issuer to provide additional information or to make modifications. If TDI determines that a rate increase is unreasonable but that the issuer is legally permitted to implement the rate increase, TDI will issue a final determination and a brief explanation. After receiving a final determination that a rate increase is unreasonable, the issuer must submit a final justification for the rate increase and prominently post information concerning the rate increase, consistent with 45 CFR §154.230, concerning Submission and Posting of Final Justifications for Unreasonable Rate Increases.

§3.507. Public Disclosure and Input.

(a) Information related to proposed annual rate increases of 15% or more will be publicly available on the website published by the Centers for Medicare and Medicaid Services (CMS). A link to the CMS website will be posted on TDI's website: www.tdi.texas.gov/health/ratereview.html.

(b) Public comments concerning proposed rate increases can be sent to RateReview@tdi.texas.gov.

(c) Final rate increases will be publicly available on the website published by CMS no later than the first day of the annual open enrollment period in the individual market for the applicable calendar year.

(d) TDI will make information related to proposed or final rate filings available to the public in a manner consistent with 45 CFR §154.301(b), concerning CMS's Determinations of Effective Rate Review Programs.

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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James Person
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CHAPTER 12. INDEPENDENT REVIEW ORGANIZATIONS

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §12.4, concerning applicability, and to add new Subchapter G, consisting of §12.601, concerning preauthorization exemptions for independent review organizations (IROs). These amended and new sections implement House Bill 3459, 87th Legislature, 2021.

EXPLANATION. Amended §12.4 and new Subchapter G, consisting of §12.601, are necessary to conform TDI's utilization review rules with HB 3459. HB 3459 allows a health maintenance organization or insurer to rescind an exemption from preauthorization requirements under certain conditions. A physician or provider may appeal an adverse determination regarding a preauthorization to an IRO to review the appropriateness of the rescission determination by the health maintenance organization or insurer.

The proposed amended and new sections are described in the following paragraphs.

Section 12.4. The amendments to §12.4(a) replace the phrase "of this subchapter" with "of this title" and add a reference to the section heading for consistency with current agency language preferences and drafting practices. The amendments to §12.4(b) remove obsolete applicability language. New language states that independent reviews of adverse determinations regarding preauthorization exemptions made under Texas Insurance Code Chapter 4201, Subchapter N, must comply with new §12.601 as added by this proposal.

Subchapter G. Exemptions for Independent Review Organizations. TDI proposes to add new Subchapter G, which consists of new §12.601.

Section 12.601. New §12.601 outlines requirements and procedures for appeals of adverse determinations regarding a preauthorization exemption.

New §12.601(a) defines "adverse determination regarding a preauthorization exemption," "issuer," "physician," "preauthorization exemption," and "provider" in order to clarify these terms, which may have different meanings in other contexts in 28 TAC Chapter 12, and to refer to the preauthorization exemption process in 28 TAC Chapter 19.

New §12.601(b) states that the independent review of an adverse determination regarding a preauthorization exemption, the IRO that performs that review, and the appropriate issuer are subject to Insurance Code Chapter 4201, Subchapter N, and 28 TAC Chapter 12, except as otherwise specified in §12.601.

New §12.601(c) states that for the purposes of §12.601, a physician or provider should be identified using the National Provider Identifier under which a physician or provider makes preauthorization requests.

New §12.601(d) states that an issuer must submit a request for independent review of an adverse determination regarding a preauthorization exemption to TDI on behalf of a physician or provider.

New §12.601(e) requires that the IRO use the same random sample of claims used in the issuer's initial determination to rescind the preauthorization exemption and that only claims that did not meet the screening criteria are subject to independent review. A physician or provider can request that the IRO review another random sample of claims under Insurance Code §4201.656(d) to the extent that the issuer conducted a retrospective review of more claims than were included in the original random sample.

New §12.601(f) states that appeals for an adverse determination regarding a preauthorization exemption follow TDI's process for assigning IROs under 28 TAC §12.502, except that TDI will only provide notice of the appeal to the IRO, the issuer, and the physician or provider.

New §12.601(g) states that 28 TAC §12.206 does not apply to an IRO's independent review of an adverse determination regarding a preauthorization exemption.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, has determined that during each year of the first five years the proposed amendments and new section are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments and section, other than that imposed by statute. Ms. Bowden made this determination because the proposed amendments and section do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amendments and section.

Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments and section are in effect, Ms. Bowden expects that administering the amendments and section will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 4201, Subchapter N, and implement a cohesive preauthorization exemption process under that subchapter.

Ms. Bowden does not expect that the proposed amendments and section will impose new economic costs on persons required to comply with them. Amended §12.4 and new §12.601(b) require that issuers, IROs, and the independent review of rescissions of preauthorization exemptions follow all other rules pertaining to IROs in Chapter 12, with limited exceptions. These rules require, among other things: (1) each IRO to apply to TDI for registration as a certified IRO and pay either an original application fee of $1000 or a renewal fee of $400; (2) issuers to pay IROs either $650 or $460 for each independent review, depending on the classification of the review; (3) all IROs to be subject to on-site examinations by TDI; and (4) all independent reviews to be conducted under an independent review plan. However, IROs are already subject to these requirements and costs, and TDI does not anticipate new organizations to apply for certification as IROs just to engage in independent reviews of adverse determinations regarding preauthorization exemptions. Therefore, these costs to IROs are existing costs and are not directly attributable to this rule proposal. Additionally, issuers are re-

quired by Insurance Code §4201.656(b) to pay IROs for independent reviews of adverse determinations regarding preauthorization exemptions, and the fee amounts already set in rule ($650 or $450) are intended to fund the IRO's operations. *See* Tex. Ins. Code §4202.006, concerning Payor Fees. Therefore, the issuer costs described above are attributable to statute and not this rule proposal.

The proposal also requires that independent reviews of adverse determinations regarding preauthorization exemptions be randomly assigned to IROs as provided in 28 TAC §12.502. Under the current rule, certified IROs must accept an assignment unless conflicted out. TDI anticipates that an IRO may have to add staff to accommodate new requests for independent reviews that result from rescissions of preauthorization exemptions. Whether an IRO must add staff will depend on decisions by issuers, including the numbers of preauthorization requirements imposed, preauthorization exemptions granted, and subsequent rescissions of preauthorization exemptions; the number of providers that choose to request independent reviews; and the IRO's internal processes and needs. Though costs may vary, TDI estimates the following possible needs: individual employee compensation for administrative assistants at a mean hourly wage of $17.00 per hour for up to 100 staff hours, medical records specialists or health technicians at a mean hourly wage of $21.20 per hour for up to 250 staff hours, and computer programmers at a mean hourly wage of $49.35 for up to 40 staff hours to implement the new appeals process and to aid in reviewing each appeal regarding a preauthorization exemption. These wages are based on the latest information from the Labor Market and Career Information (LCMI) Department of the Texas Workforce Commission at texaswages.com/WDAWages. But to the extent that an IRO does need to add staff to perform independent reviews of adverse determinations of preauthorization exemptions, TDI anticipates that the cost of additional staff will be covered by the fees issuers must pay under existing 28 TAC §12.403 to fund the IRO's operations.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments and section will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons. Therefore, no additional rule repeals or amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments and new section are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will increase the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 9, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2832 at 2:00 p.m. central time, on May 12, 2022, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin Texas.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §12.4

STATUTORY AUTHORITY. TDI proposes amendments to §12.4 under Insurance Code §4201.003 and §36.001.

Insurance Code §4201.003 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4201.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §12.4 implement Insurance Code Chapter 4201, Subchapter N.

§12.4. Applicability.

(a) All independent review organizations (IROs) performing independent reviews of adverse determinations made by utilization review agents, health insurance carriers, health maintenance organizations, and managed care entities, must comply with this chapter. IROs performing independent reviews of adverse determinations made by certified workers' compensation health care networks and workers' compensation insurance carriers must comply with this chapter, subject to §12.6 of this title (relating to Independent Review of Adverse Determinations of Health Care Provided Under Labor Code Title 5 or Insurance Code Chapter 1305) [~~subchapter~~].

(b) All IROs performing independent reviews of adverse determinations regarding preauthorization exemptions made under Insurance Code Chapter 4201, Subchapter N, concerning Exemption From Preauthorization Requirements for Physicians and Providers Providing Certain Health Care Services, must comply with §12.601 of this title (relating to Preauthorization Exemptions). [~~This chapter is effective on July 7, 2015. Unless otherwise provided, this chapter applies to all requests for independent review filed with the department on or after July 7, 2015. All independent reviews filed with the department before July 7, 2015, will be subject to the rules in effect at the time the independent review was filed with the department.~~]

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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James Person
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SUBCHAPTER G. EXEMPTIONS FOR INDEPENDENT REVIEW ORGANIZATIONS

28 TAC §12.601

STATUTORY AUTHORITY. TDI proposes new §12.601 under Insurance Code §4201.003 and §36.001.

Insurance Code §4201.003 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4201.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 12.601 implements Insurance Code Chapter 4201, Subchapter N.

§12.601. Preauthorization Exemptions.

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

(1) Adverse determination regarding a preauthorization exemption--Has the same meaning as defined in §19.1730 of this title (relating to Definitions).

(2) Issuer--Has the same meaning as defined in §19.1730 of this title.

(3) Physician--Has the same meaning as defined by Insurance Code §843.002, concerning Definitions.

(4) Preauthorization exemption--Has the same meaning as defined in §19.1730 of this title.

(5) Provider--Has the same meaning as defined in Insurance Code §843.002.

(b) An independent review of an adverse determination regarding a preauthorization exemption, the independent review organization (IRO) that performs the review, and the appropriate issuer are subject to Insurance Code Chapter 4201, Subchapter N, concerning Exemption from Preauthorization Requirements for Physicians and Providers Providing Certain Health Care Services, and the associated standards and requirements in this chapter, except as otherwise specified in this section.

(c) For purposes of this section, a physician or provider should be identified using the National Provider Identifier under which a physician or provider makes preauthorization requests.

(d) Notwithstanding §12.501 of this title (relating to Requests for Independent Review), an issuer must submit a request for independent review of an adverse determination regarding a preauthorization exemption to the department on behalf of a physician or provider.

(e) The IRO must review the same random sample of claims on which the issuer's rescission was based, unless the physician or provider requests another random sample. Only the claims that the issuer's retrospective review determined did not meet the screening criteria are subject to independent review. If requested by the physician or provider, the IRO may review another random sample of claims under Insurance Code §4201.656(d), concerning Independent Review of Exemption Determination, to the extent that the issuer conducted a retrospective review of more claims than were included in the original random sample.

(f) Appeals for an adverse determination regarding a preauthorization exemption to an IRO follow the department's process for assigning IROs under §12.502 of this title (relating to Random Assignment), except that notification under §12.502(a) will only be made to the IRO, the issuer, and the physician or provider.

(g) Section 12.206 of this title (relating to Notice of Determinations Made by Independent Review Organizations) does not apply to a review by an IRO under this section.

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

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CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §19.1710 and to add new 28 TAC Chapter 19, Subchapter R, Division 2, §§19.1730 - 19.1733, concerning requirements prior to issuing an adverse determination and preauthorization exemptions. These amended and new sections implement House Bill 3459, 87th Legislature, 2021.

EXPLANATION. The amendments to §19.1710 and addition of new Division 2, §§19.1730 - 19.1733 to Subchapter R are necessary to conform TDI's rules regarding utilization review with HB 3459. HB 3459 allows a health maintenance organization or insurer to grant, deny, or rescind an exemption from preauthorization requirements under certain conditions. Under the proposed rules, an issuer must provide notice of an initial exemption or denial of an exemption not later than October 1, 2022, based on an evaluation period of January 1, 2022, through June 30, 2022.

The proposed amended and new sections are described in the following paragraphs.

Subchapter R. Utilization Reviews for Health Care Provided Under a Health Benefit Plan or Health Insurance Policy.

Section 19.1710. Amended §19.1710 clarifies that a utilization review agent must afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician licensed to practice in Texas. This section follows Insurance Code §4201.206, as amended by HB 3459, in which new language specifies that an agent must provide to a health

care provider an opportunity to discuss the health care service in question with a physician licensed to practice medicine "in this state." Physicians holding Texas Administrative Medicine Licenses under the Medical Practice Act and Texas Medical Board rule 22 TAC §172.17 meet this standard. TDI has historically interpreted this statute to include Texas Administrative Medicine Licenses, and TDI believes that recent changes to §4201.206 do not indicate that this long-standing position should change. The section is also amended to add a sentence stating, in accordance with Insurance Code §4201.206, that if the health care service was ordered, requested, or provided by a physician, the opportunity to discuss the health care service in question must be with a physician licensed to practice medicine in Texas and who has the same or similar specialty as the requesting physician.

Division 2. Preauthorization Exemptions. TDI proposes to add new Division 2, titled "Preauthorization Exemptions," to distinguish §§19.1730 - 19.1733 from existing rules in Subchapter R, which relate to utilization review and preauthorization procedures generally. After this Division's adoption, a new Division 1, with a heading clarifying that it addresses utilization review, will be administratively added for §§19.1701 - 19.1719.

Section 19.1730. New §19.1730 defines terms used in the new division: "adverse determination regarding a preauthorization exemption," "denial of preauthorization exemption," "evaluation," "evaluation period," "issuer," "particular health care service," "physician," "preauthorization," "preauthorization exemption," "provider," "random sample," "rescission of preauthorization exemption," and "treating physician or provider." The definitions clarify:

- the nature of an adverse determination regarding a preauthorization exemption, as compared with the meaning of adverse determination under §19.1703;

- the number of claims needed for granting or denying a preauthorization exemption;

- the threshold percentage of accepted claims needed for an issuer to grant, deny, or rescind a preauthorization exemption;

- the nature of an evaluation depending on whether the physician or provider currently has a preauthorization exemption in place;

- the time allowed for evaluation periods; and

- the scope of "health care services" to include prescription drugs.

Section 19.1731. New §19.1731 describes the initial preauthorization exemption process. Subsection (a) clarifies that for purposes of Division 2, a "physician" or "provider" should be identified using the National Provider Identifier under which a physician or provider makes preauthorization requests. Subsection (b) states that the issuer must review the outcomes of no fewer than 20 preauthorization requests for a particular health care service in a given evaluation period and determine whether the physician or provider qualifies for an exemption. The department specifically seeks comments on this minimum threshold for review and whether it should be modified. Subsection (c) provides the requirements for an issuer to rescind a preauthorization exemption that has already been granted to a physician or provider, which must be rescinded consistent with Insurance Code §4201.655. Subsection (d) clarifies that a treating physician rendering or referring services without a preauthorization exemption who relies on another physician's preauthorization exemption in violation of subsection (d) may be considered by the issuer as failing to substantially perform the health care service. In that situation, the issuer may reduce or deny payment for that service under Insurance Code §4201.659.

Section 19.1732. New §19.1732(a) states that an issuer must provide notice to the physician or provider when granting a preauthorization exemption, and it requires that an exemption be in place for at least six months before it can be rescinded. If an issuer subsequently receives a preauthorization request from the physician or provider for a service for which the physician or provider has been granted an exemption, the issuer must provide notice in accordance with Insurance Code §4201.659(e). For denials of preauthorization exemptions, new §19.1732(b) states that an issuer must provide notice and list the reasons for a denial in accordance with Insurance Code §4201.655(c)(2). New §19.1732(c) provides a required timeframe for issuing notices of exemption or denial following the initial and subsequent evaluation periods and clarifies that such notices are required with respect to a particular health care service only if the physician or provider had submitted at least 20 preauthorization requests during the evaluation period. The department specifically seeks comments on this minimum duration for exemptions and the timeframe for issuing notices, and whether either should be modified. New §19.1732(d) describes the requirements of the notice that must be delivered to a physician or provider when rescinding a preauthorization exemption, the requirements for a physician or provider to appeal a rescission of preauthorization exemption, and notes an example form (LHL011) available on TDI's website.

Section 19.1733. New §19.1733(a) clarifies that Insurance Code §4201.305 does not apply to retrospective reviews conducted in accordance with Insurance Code §4201.659(b)(1). New §19.1733(b) provides that a physician or provider has at least 30 days to provide medical records or other documents for the issuer to conduct an evaluation. Medical records can be requested only during an evaluation period or within 90 days following the end of an evaluation period. If the physician or provider does not provide the necessary records for an issuer to make a determination, the issuer may determine that the claim would not have met the screening criteria. New §19.1733(c) states that a physician or provider may request an independent review of the retrospective review that resulted in the rescission of preauthorization exemption at any time before the rescission is effective. New §19.1733(d) provides that a physician or provider must submit to the issuer the form provided by the issuer under §19.1732(c) in order to request an independent review. Upon receipt, the issuer must submit the request for independent review to TDI, consistent with proposed new 28 TAC §12.601 (which is included in a separate proposal) and 28 TAC §19.1717. New §19.1733(e) states that a physician or provider may request that the independent review organization review another random sample of claims. New §19.1733(f) states that an issuer must communicate the determination of a review by the independent review organization to the physician or provider within five days. New §19.1733(g) states that physicians and providers must continue to maintain medical records adequate to demonstrate that the exempted services they provide meet medical guidelines in order to retain a preauthorization exemption. Most, if not all, physicians and providers subject to this proposed rule already maintain records for a sufficient amount of time. *See, e.g.,* 22 TAC §76.4(a) (Texas Board of Chiropractic Examiners rule imposing a six-year records retention requirement); 22 TAC §165.1(b)(1) (Texas Medical Board rule imposing a six-year records retention requirement); and 22 TAC

§§291.34(a), 291.75(a), and 291.94(a) (Texas State Pharmacy Board rules imposing a two-year records retention requirement). If there are no adequate records for an issuer to use during an evaluation, an exemption may be rescinded.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of Regulatory Initiatives in the Life and Health Division, has determined that during each year of the first five years the proposed amendments and sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments and sections, other than that imposed by the statute. Ms. Bowden made this determination because the proposed amendments and sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amendments and sections.

Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments and sections are in effect, Ms. Bowden expects that administering the amendments and sections will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 4201, Subchapter N, and implement a cohesive preauthorization exemption process under that subchapter.

Ms. Bowden expects that the proposed amendments and sections will not impose an economic cost on persons required to comply with them. Any associated costs are due to statute or other current regulatory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments and sections will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons. Therefore, no additional rule repeals or amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed sections are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will increase the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 9, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2832 at 2:00 p.m. central time, on May 12, 2022, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin Texas.

SUBCHAPTER R. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER A HEALTH BENEFIT PLAN OR HEALTH INSURANCE POLICY

28 TAC §19.1710

STATUTORY AUTHORITY. TDI proposes amendments to §19.1710 under Insurance Code §4201.003 and §36.001.

Insurance Code §4201.003 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4201, concerning utilization review and independent review.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §19.1710 implement Insurance Code §4201.206, as amended by HB 3459.

§19.1710. Requirements Prior to Issuing an Adverse Determination.

In any instance in which the URA is questioning the medical necessity, the appropriateness, or the experimental or investigational nature of the health care services prior to the issuance of an adverse determination, the URA must afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician licensed to practice medicine in Texas. The discussion must include, at a minimum, the clinical basis for the URA's decision and a description of documentation or evidence, if any, that can be submitted by the provider of record that, on appeal, might lead to a different utilization review decision. If the health care service was ordered, requested, or provided, or is to be provided, by a physician, then the opportunity must be with a physician licensed to practice medicine in Texas and who has the same or similar specialty as the physician.

(1) The URA must provide the URA's telephone number so that the provider of record may contact the URA to discuss the pending adverse determination.

(2) The URA must maintain, and submit to TDI on request, documentation that details the discussion opportunity provided to the provider of record, including the date and time the URA offered the opportunity to discuss the adverse determination, the date and time that the discussion, if any, took place, and the discussion outcome.

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

Filed with the Office of the Secretary of State on March 25, 2022.

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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 676-6584

DIVISION 2. PREAUTHORIZATION EXEMPTIONS

28 TAC §§19.1730 - 19.1733

STATUTORY AUTHORITY. TDI proposes new Division 2, §§19.1730 - 19.1733, under Insurance Code §4201.003 and §36.001.

Insurance Code §4201.003 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4201, concerning utilization review and independent review.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Proposed new §§19.1730 - 19.1733 implement Insurance Code Chapter 4201, Subchapter N.

§19.1730. Definitions.

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

(1) Adverse determination regarding a preauthorization exemption--A decision by an issuer that one or more claims reviewed as part of an evaluation, with respect to a particular health care service for which the physician or provider has a preauthorization exemption, did not meet the issuer's screening criteria, and leads to an issuer's decision to rescind a preauthorization exemption. An adverse determination regarding a preauthorization exemption is not an adverse determination as defined under §19.1703 of this title (relating to Definitions).

(2) Denial of preauthorization exemption--A determination that a physician or provider does not qualify for a preauthorization exemption based on the issuer conducting an evaluation of preauthorization requests and demonstrating that the physician or provider received full and final approval for fewer than 90% of the preauthorization requests made for a particular health care service during the most recent evaluation period.

(3) Evaluation--

(A) with respect to a particular health care service for which a physician or provider does not have a preauthorization exemption, a review of the outcomes of preauthorization requests submitted by the physician or provider during the most recent evaluation period to determine the percentage of requests that were approved, which is conducted for the purpose of evaluating whether to grant or deny a preauthorization exemption; or

(B) with respect to a particular health care service for which a physician or provider has a preauthorization exemption, a review of a random sample of claims to determine the percentage of claims that would have been approved, based on the issuer's applicable medical necessity criteria at the time the service was provided, as applied under a retrospective review of claims submitted by the physician or provider during the most recent evaluation period, which is conducted for the purpose of evaluating whether to continue or rescind a preauthorization exemption and consistent with Insurance Code §4201.655, concerning Denial or Rescission of Preauthorization Exemption;

(4) Evaluation period--The six-month period preceding an evaluation. The evaluation periods are as follows:

(A) for an initial determination of a preauthorization exemption grant or denial, the evaluation period is the six-month period that begins on January 1, 2022, or the subsequent six-month periods of July 1 - December 31 and January 1 - June 30 that follow each year;

(B) after a denial or rescission of a preauthorization exemption for a particular health care service, the subsequent six-month evaluation period begins on the first day following the end of the evaluation period that formed the basis of the denial or rescission; and

(C) for a notification of a preauthorization exemption rescission as provided in Insurance Code §4201.655(a), the evaluation period is the six-month period an issuer determines or the subsequent six-month periods that follow, but there may not be more than two months between an evaluation period ending and the provision of notice under §19.1732 of this title (relating to Notice of Preauthorization Exemption Grants, Denials, or Rescissions).

(5) Issuer--A health maintenance organization or insurer that is subject to Insurance Code Chapter 4201, Subchapter N, including a URA or a person who contracts with an issuer to issue a preauthorization determination, or performs the functions described in this division.

(6) Particular health care service--A health care service, including a prescription drug, that is subject to preauthorization as listed on the issuer's website under §19.1718(j) of this title (relating to Preauthorization for Health Maintenance Organizations and Preferred Provider Benefit Plans).

(7) Physician--Has the meaning assigned by Insurance Code §843.002, concerning Definitions.

(8) Preauthorization--Has the meaning assigned in Insurance Code §4201.651, concerning Definitions. "Preauthorization" under this division does not include concurrent utilization review.

(9) Preauthorization exemption--A privilege obtained under this division in which a physician or provider is not subject to a preauthorization requirement that otherwise applies with respect to a particular health care service. The preauthorization exemption applies both to care rendered by a treating physician or provider and to care ordered by a physician or provider who is acting in his or her capacity as a treating physician or provider.

(10) Provider--Has the meaning assigned by Insurance Code §843.002, concerning Definitions.

(11) Random sample--A collection of at least five but no more than 20 claims for a particular health care service, selected without method or conscious decision, for the purpose of evaluating a physician's or provider's continued eligibility for a preauthorization exemption.

(12) Rescission of preauthorization exemption--An adverse determination regarding a preauthorization exemption based on an evaluation of claims by an individual licensed to practice medicine

in this state in which the issuer would have fully approved fewer than 90% of claims for a particular health care service.

(13) Treating physician or provider--The physician or other provider who is primarily responsible for a patient's health care for an illness or injury. A "treating physician or provider" includes a rendering physician or provider or a referring physician or provider.

§19.1731. Preauthorization Exemption.

(a) For the purposes of this division, a physician or provider should be identified using the National Provider Identifier under which a physician or provider makes preauthorization requests.

(b) With respect to a particular health care service for which a physician or provider does not have a preauthorization exemption, an issuer must conduct an evaluation of all preauthorization requests submitted by the physician or provider during the most recent evaluation period that were finalized prior to the evaluation and may not include a request that is pending appeal at the time the data is analyzed. The evaluation must be based on no fewer than 20 preauthorization requests.

(c) With respect to a particular health care service for which a physician or provider has a preauthorization exemption, an issuer may conduct an evaluation to determine whether to rescind a preauthorization exemption consistent with Insurance Code §4201.655, concerning Denial or Rescission of Preauthorization Exemption. In order to determine whether to rescind an exemption, the issuer must conduct a retrospective review of a random sample of at least five and no more than 20 claims submitted during the most recent evaluation period.

(d) Other than care ordered by a treating physician or provider that has a preauthorization exemption that is then rendered by a physician or provider that does not have an exemption, a treating physician may not rely on another physician's preauthorization exemption. If a treating physician does not have a preauthorization exemption and relies on another physician's preauthorization exemption in violation of this subsection, an issuer may consider that treating physician as failing to substantially perform the health care service under Insurance Code §4201.659, concerning Effect of Preauthorization Exemption, and may reduce or deny payment for that service on that basis.

§19.1732. Notice of Preauthorization Exemption Grants, Denials, or Rescissions.

(a) When granting a preauthorization exemption, an issuer must provide notice to the physician or provider, consistent with Insurance Code §4201.659(d), concerning Effect of Preauthorization Exemption. The exemption begins on the date the notice is issued and must be in place for at least six months before it may be rescinded. If an issuer subsequently receives a preauthorization request from the physician or provider for a particular health care service for which an exemption has been granted, the issuer must provide a notice consistent with Insurance Code §4201.659(e).

(b) When denying a preauthorization exemption, an issuer must provide notice to the physician or provider that demonstrates that the physician or provider does not meet the criteria for a preauthorization exemption, consistent with Insurance Code §4201.655(c)(2), concerning Denial or Rescission of Preauthorization Exemption.

(c) For the initial evaluation period of January 1 through June 30, 2022, an issuer must provide notice granting or denying a preauthorization exemption no later than October 1, 2022. For subsequent evaluation periods during which a physician or provider does not have a preauthorization exemption, an issuer must provide notice to the physician or provider granting or denying a preauthorization exemption no later than two months following the day after the end of the evaluation period. Notice need only be provided for a particular health care service if the issuer was able to complete an evaluation of at least 20 preauthorization requests, as provided in §19.1731(b) of this title (relating to Preauthorization Exemption).

(d) When rescinding a preauthorization exemption, an issuer must provide notice to the physician or provider, consistent with Insurance Code §4201.655(a)(3). The notice must include the following (a sample form LHL011 is available on TDI's website):

(1) an identification of the health care service for which a preauthorization exemption is being rescinded and the date the rescission is effective, consistent with Insurance Code §4201.654, concerning Duration of Preauthorization Exemption;

(2) a plain language explanation of how the physician or provider may appeal and seek an independent review of the determination, the date the notice is issued, and the company's address and contact information for returning the form to request an appeal;

(3) the sample information used to make the determination, including:

(A) identification of each claim included in the random sample, and if retrospective review was conducted for additional claims that were not included in the random sample, separate identification of such claims;

(B) the issuer's determination of whether each claim met the issuer's screening criteria; and

(C) for any claim determined to not have met the issuer's screening criteria:

(i) the principal reasons for the determination that the claim did not meet the issuer's screening criteria;

(ii) the clinical basis for the determination that the claim did not meet the issuer's screening criteria;

(iii) a description of the sources of the screening criteria that were used as guidelines in making the determination; and

(iv) the professional specialty of the physician, doctor, or other health care provider that made the determination;

(4) a space to be filled out by the physician or provider that includes:

(A) the name, address, contact information, and identification number of the physician or provider requesting an independent review;

(B) an indication of whether the physician or provider is requesting that the independent review organization review the same random sample or a different random sample of claims, if available; and

(C) the date the appeal is being requested; and

(5) an instruction for the physician or provider to return the form to the issuer before the date the rescission becomes effective.

§19.1733. Retrospective Reviews and Appeals of Preauthorization Exemption Rescissions.

(a) For a retrospective review that is conducted under Insurance Code §4201.659(b)(1), concerning Effect of Preauthorization Exemption, to determine whether the physician or provider still qualifies for an exemption, Insurance Code §4201.305, concerning Notice of Adverse Determination for Retrospective Utilization Review, does not apply.

(b) An issuer that is conducting an evaluation to determine whether a physician or provider still qualifies for a preauthorization

exemption may request medical records or other documents, consistent with §19.1707 of this title (relating to URA contact with and Receipt of Information from Health Care Providers), and must provide at least 30 days for a physician or provider to provide the records. Medical records should be requested for no more than 20 claims for a particular health care service and may be requested only during an evaluation period or within 90 days following the end of an evaluation period. If the physician or provider fails to provide the records necessary for the issuer to make a determination, the issuer may determine that the claim would not have met the screening criteria.

(c) After receiving a notice of rescission, a physician or provider may request an independent review of the adverse determination regarding a preauthorization exemption at any time before the rescission becomes effective.

(d) In order to request an independent review of a rescission of a preauthorization exemption, a physician or provider must submit the form provided by the issuer under §19.1732(c) of this title (relating to Notice of Preauthorization Exemption Grants, Denials, or Rescissions). Upon receipt, the issuer must submit the request for independent review to the department, consistent with §12.601 of this title (relating to Preauthorization Exemptions), and §19.1717(c) of this title (relating to Independent Review of Adverse Determinations).

(e) If the notice of rescission of preauthorization exemption identified that retrospective review was conducted for additional claims that were not included in the random sample, the physician or provider, when requesting an independent review, may request that the independent review organization review another random sample of claims.

(f) An issuer must communicate the determination of a review by an independent review organization under §12.601 of this title to the physician or provider within five days.

(g) In order to retain a preauthorization exemption, a physician or provider must continue to maintain medical records adequate to demonstrate that health care services meet medical guidelines. In the absence of adequate records during an evaluation or appeal, an exemption may be rescinded.

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

Filed with the Office of the Secretary of State on March 25, 2022.

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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 676-6584

CHAPTER 21. TRADE PRACTICES
SUBCHAPTER TT. ALL-PAYOR CLAIMS DATABASE

28 TAC §§21.5401 - 21.5406

The Texas Department of Insurance proposes new 28 TAC Chapter 21, Subchapter TT, consisting of §§21.5401 - 21.5406, concerning the all-payor claims database. These sections implement House Bill 2090, 87th Legislature, 2021, which amended the Texas Insurance Code by adding Chapter 38, Subchapter I, concerning Texas All-Payor Claims Database.

EXPLANATION. Insurance Code Chapter 38, Subchapter I, requires establishment of an all-payor claims database to increase public transparency of health care information and improve the quality of health care in this state. Insurance Code §38.403 provides that the Commissioner is to adopt rules establishing fixed terms for members of a stakeholder advisory group. Insurance Code §38.404 requires the department to collaborate with the Center for Healthcare Data at The University of Texas Health Science Center at Houston (the Center) to aid in the establishment of the database. Insurance Code §38.409 requires the Commissioner, in consultation with the Center, to adopt rules specifying the types of data a payor is required to provide; detailing the schedule, frequency, and manner of data submission; and establishing oversight and enforcement mechanisms.

The department received comments on an informal draft posted on the department's website on November 12, 2021. The department considered those comments when drafting this proposal.

The proposed new sections are described in the following paragraphs.

Section 21.5401. New §21.5401 identifies the types of health plans that are subject to the requirements to produce all-payor claims data files. As proposed, the list of plans subject to these requirements includes county employee health benefit plans established under Local Government Code Chapter 157 and group dental, health and accident, or medical expense coverage provided by a risk pool created under Local Government Code Chapter 172. The department invites comments on whether these plans qualify as a "payor" under Texas Insurance Code §38.402(7) and can be subject to the requirements of this rulemaking, notwithstanding language in Texas Local Government Code §§157.008(2) and 172.014 limiting the applicability of the Insurance Code to and the department's authority over such plans. *See* Tex. Att'y Gen. Op. No. GA-0047 (2003) at 1 (A "risk pool [under Chapter 172 of the Local Government Code] is subject to an Insurance Code provision that expressly encompasses a risk pool."). The department received a comment on this subject on the informal draft which noted that the filed version of HB 2090 expressly referenced those types of plans, but that reference was removed by the author in a floor amendment. The commenter believed that action indicated a legislative intent not to extend the applicability of HB 2090 to those types of plans. However, the portion of the bill from which those references were deleted did not concern the All-Payor Claims Database. *See* H.J. of Tex., 87th Leg., R.S., 1056 (2021). Therefore, it is not relevant in determining the proper scope of this rulemaking, so the department seeks additional comments on this issue.

New §21.5401 also specifies that the data required by new Subchapter TT is limited to Texas resident members.

Section 21.5402. New §21.5402 provides definitions of terms used throughout the new rules, including various types of data files.

Section 21.5403. New §21.5403 describes the database's common data layout and permits the Center to provide flexibility for payors submitting data by issuing a submission guide or other technical guidance for existing requirements. It also specifies that any inconsistencies in the Center's submission guide and these rules will be controlled by the text of the rules.

Section 21.5404. New §21.5404 provides technical requirements concerning the formatting, encryption, and transmission of data. It instructs payors or their designees to register with

the Center to obtain their credentials and unique identification numbers to be used with the submission and naming of data. It also prohibits the submission of duplicate data submitted by a third party and requires certain payors to ask sponsors of health benefit plans referenced in Insurance Code §38.407 whether they will voluntarily submit plan data.

The new section lists the data files that must be submitted consistent with the requirements of the Texas All-Payor Claims Database (APCD) common data layout (CDL), including standardized values and code sources. It requires files to include information that enables the data to be separated based on the types of plans. It clarifies certain requirements for claims data files, including specifying that all claims data must be submitted for a given reporting period based on the claim adjudication date.

This new section also sets forth requirements related to reporting members' social security numbers or unique member IDs, requires enrollment and eligibility data to be reported at the individual member level, and requires header and trailer records for file submissions.

Section 21.5405. New §21.5405 describes the timing and frequency of the required data submissions, with schedules provided for each month. It also directs payors to submit test data, historical data, and monthly data based on notice provided by the Center and no sooner than January 1, 2023, for monthly data. This new section also provides an extension for certain small payors; allows other payors an opportunity to request an extension or a temporary exception from some requirements related to the submission of data; and outlines the Center's role in assessing, receiving, requesting corrections to, and rejecting data.

Section 21.5406. New §21.5406 prescribes the fixed terms to be served by members of the stakeholder advisory group, as directed by statute. It provides dates for the initial terms of the stakeholder advisory group as well as the staggered terms. This new section outlines the obligations of members with respect to required disclosures, conflicts of interest, standards of conduct, and removal for good cause.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of Regulatory Initiatives in the Life and Health Division, has determined that during each year of the first five years the proposed new sections are in effect, there may be a fiscal impact on state and local governments that administer health benefit plans that are subject to reporting data to the APCD as directed by the statute. Based on the definition of "payor" in Insurance Code §38.402(7)(E), health benefit plans offered or administered by or on behalf of the state or a political subdivision are subject to requirements in Insurance Code Chapter 38, Subchapter I, and these proposed rules. The proposal clarifies in §21.5401(b)(11) - (20) the types of state and local governmental plans that are subject to reporting. Ms. Bowden has determined that state and political subdivisions will face the same potential costs as other payors. Those costs are explained in the Public Benefit and Cost Note. Most state agencies and political subdivisions offer plans that are administered by an insurance company or other third-party administrator. The costs for complying with the rules will vary depending on the technology and data systems of the administrator, and their experience reporting to APCDs in other states. While much of the costs are attributable directly to the statute, the specific data elements and reporting standards proposed in the Texas APCD CDL may create additional costs.

Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new sections are in effect, Ms. Bowden expects that administering and enforcing the proposed sections will have the public benefit of ensuring that the department's rules properly implement new Insurance Code Chapter 38, Subchapter I, which increases public transparency of health care information and enables research aimed at improving the quality of health care provided in this state.

Ms. Bowden expects that the proposed new sections will impose an economic cost on persons required to comply. The cost will vary based on each payor's data systems, staffing strategies, whether the payor offers medical or dental coverage, and whether a payor has experience reporting to an all-payor claims database in one or more other states.

Ms. Bowden expects there will be no costs added by new proposed §§21.5401 - 21.5402, which describe the applicability of the rules and definitions, respectively.

Costs may result from requirements to collect and submit data as required in proposed new §§21.5403 - 21.5405, which describe the common data layout, establish data submission requirements, and set the timing and frequency of data submissions, respectively. The statute specifies a particular set of information that must be collected at a minimum. To meet that minimum standard and achieve the legislation's desired result espoused in Insurance Code §38.404(c), the proposed rules define and identify more detailed data elements payors must submit. As the work needed to gather and report these data elements occurs simultaneously, TDI is unable to separate the costs for reporting data elements required by the rules from data elements required by the statute. Therefore, the summary below reflects TDI's estimate of the initial costs to assemble data files containing all required data elements.

Cost of personnel associated with programming information systems for data collection. The United States Department of Labor, Bureau of Labor Statistics May 2020 State Occupational Employment and Wage Estimates for Texas indicates that the hourly mean wage for computer programmers is $49.35 (www.bls.gov/oes/current/oes_tx.htm#15-0000). TDI recognizes that costs will vary depending on each payor's data systems and staffing strategies. For large carriers that are already delivering APCD data to other states and have existing operational monitoring in place, costs are expected to be minimal. Ms. Bowden estimates a one-time requirement of between 16 and 36 hours to complete the programming needed to assemble the required data files and conduct testing. Small carriers that have no APCD experience may have limited infrastructure for creating data extracts and will require a thorough testing program to validate the initial data submission. Ms. Bowden estimates that for these carriers, it will require between 112 and 240 hours to complete the programming and testing needed for the initial data submission. There is not expected to be a cost impact for payors offering Medicaid managed care plans or child health plans, as they already submit data to the Texas Health and Human Services Commission (HHSC). HHSC has indicated that they will report APCD data on behalf of those payors.

Proposed §21.5405(b)(2) requires payors to submit historical data files dating back to January 1, 2019. To the extent that payors' systems archive older data, such as data older than

three years, additional work may be required to access those historical data files. Ms. Bowden estimates a one-time requirement of between 8 and 40 hours for a computer programmer to extract the historical data files.

Costs related to the frequency of data submission. Insurance Code §38.409(a)(2) requires the submission of data not less frequently than quarterly, but the proposed rules require monthly data submissions. Any costs associated with more frequent submissions is expected to be offset by decreased costs associated with transmitting smaller data files.

Ms. Bowden expects there will be no cost added by proposed §21.5406, which outlines appointment standards for the stakeholder advisory committee.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed new sections will not have an adverse economic effect on rural communities, but it may have an adverse economic effect on small or micro businesses, to the extent that they are subject to reporting data to the APCD. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The department estimates that between 3 and 15 payors that are small or micro businesses may be required to report data to the APCD.

The primary objective of this proposal is to support the establishment of an APCD that increases transparency of health care costs, utilization, and access across all payors in Texas and includes information useful for purposes of improving health care quality and outcomes, improving population health, and controlling health care costs. TDI considered the following options to minimize any adverse effect on small and micro businesses while accomplishing the proposal's objectives: (1) exempting payors from reporting if they are small or micro businesses or based on a minimum threshold of covered lives; (2) requiring payors that are small or micro businesses to report fewer data elements; and (3) providing additional time to comply with the rules for payors that are small or micro businesses or based on a minimum threshold of covered lives.

In considering Option 1, TDI declined to provide an exemption for payors that are small or micro businesses because such an exemption is not supported by the statute. As stated in the cost note, the statute specifies a particular set of information that must be collected at a minimum. TDI does not have authority to exempt small or micro businesses from the collection of some of the data, and without the guidance provided by these rules, small or micro businesses would have a more difficult time complying with the requirements of the statute and might not provide usable data.

In regard to Option 2, the department believes an incomplete dataset would provide little value to researchers and would not have satisfied the purpose of the statute. However, the proposal does authorize the Center to grant temporary exceptions for issuers that are unable to comply with certain reporting requirements. Such exceptions may be granted if compliance would impose an unreasonable cost relative to the public value that would be gained from full compliance. This will provide flexibility, particularly for smaller issuers, if any element of the common data layout not required by statute or other rule requirement imposes undue costs, or if a small or micro business needs more time to fully comply with the rule.

After considering Option 3, TDI opted to provide additional implementation time based on the number of lives covered by the payor in plans subject to reporting. This will mitigate the costs required to implement the rule by allowing eligible payors to spread those costs over a longer timeframe. This may further reduce costs by enabling payors to implement the requirements without hiring additional staff. This flexibility will be available to all payors with fewer than 10,000 covered lives in plans that are subject to reporting, including small and micro businesses. This is a metric that can be validated by the department and ensures that high-value datasets are not delayed.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed new sections are necessary to implement legislation. The proposed rules implement Insurance Code Chapter 38, Subchapter I, as added by HB 2090.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed new sections are in effect, the proposed rules:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will increase the number of individuals subject to the rules' applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on May 9, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2830 at 9:30 a.m., central time, on Wednesday, May 4, 2022, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. The department proposes §§21.5401 - 21.5406 under Insurance Code §§38.403, 38.404, 38.409, and 36.001.

Insurance Code §38.403 provides that members of the stakeholder advisory group serve fixed terms as prescribed by rules adopted by the Commissioner.

Insurance Code §38.404 provides that payors must submit the required data at a schedule and frequency determined by the Center and adopted by the Commissioner by rule.

Insurance Code §38.409 provides that the Commissioner adopt rules specifying the types of data a payor is required to provide to the Center and also specifying the schedule, frequency, and manner in which a payor must provide data to the Center.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.5401 implements Insurance Code §38.402 and §38.407. Section 21.5406 implements Insurance Code §38.403. Sections 21.5403 - 21.5405 implement Insurance Code §38.404 and §38.409.

§21.5401. Applicability.

(a) This subchapter applies to a payor that issues, sponsors, or administers a plan subject to reporting under subsection (b) of this section.

(b) Payors must submit data files as required by this subchapter with respect to each of the following types of health benefit plans or dental benefit plans issued in Texas:

(1) a health benefit plan as defined by Insurance Code §1501.002, concerning Definitions;

(2) an individual health care plan that is subject to Insurance Code §1271.004, concerning Individual Health Care Plan;

(3) an individual health insurance policy providing major medical expense coverage that is subject to Insurance Code Chapter 1201, concerning Accident and Health Insurance;

(4) a health benefit plan as defined by §21.2702 of this title (relating to Definitions);

(5) a student health plan that provides major medical coverage, consistent with the definition of student health insurance coverage in 45 CFR §147.145, concerning Student Health Insurance Coverage;

(6) short-term limited-duration insurance as defined by Insurance Code §1509.001, concerning Definition;

(7) individual or group dental insurance coverage that is subject to Insurance Code Chapter 1201 or Insurance Code Chapter 1251, concerning Group and Blanket Health Insurance;

(8) dental coverage provided through a single service HMO that is subject to Chapter 11, Subchapter W, of this title (relating to Single Service HMOs);

(9) a Medicare supplement benefit plan under Insurance Code Chapter 1652, concerning Medicare Supplement Benefit Plans;

(10) a health benefit plan as defined by Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements;

(11) basic coverage under Insurance Code Chapter 1551, concerning Texas Employees Group Benefits Act;

(12) a basic plan under Insurance Code Chapter 1575, concerning Texas Public School Employees Group Benefits Program;

(13) a health coverage plan under Insurance Code Chapter 1579, concerning Texas School Employees Uniform Group Health Coverage;

(14) basic coverage under Insurance Code Chapter 1601, concerning Uniform Insurance Benefits Act for Employees of the University of Texas System and the Texas A&M University System;

(15) a county employee health benefit plan established under Local Government Code Chapter 157, concerning Assistance, Benefits, and Working Conditions of County Officers and Employees;

(16) group dental, health and accident, or medical expense coverage provided by a risk pool created under Local Government Code Chapter 172, concerning Texas Political Subdivisions Uniform Group Benefits Program;

(17) the state Medicaid program operated under Human Resources Code Chapter 32, concerning Medical Assistance Program;

(18) a Medicaid managed care plan operated under Government Code Chapter 533, concerning Medicaid Managed Care Program;

(19) the child health plan program operated under Health and Safety Code Chapter 62;

(20) the health benefits plan for children operated under Health and Safety Code Chapter 63;

(21) a Medicare Advantage Plan providing health benefits under Medicare Part C as defined in 42 USC §1395w-21, *et seq.*;

(22) a Medicare Part D voluntary prescription drug benefit plan providing benefits as defined in 42 USC §1395w-101, *et seq.*; and

(23) a health benefit plan or dental plan subject to the Employee Retirement Income Security Act of 1974 (29 USC §1001 *et seq.*) if the plan sponsor or administrator elects to submit such data.

(c) Data files required by this subchapter must include information with respect to all Texas resident members, as defined in §21.5402(16) of this title. Information on persons who are not Texas resident members is not required.

§21.5402. Definitions.

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

(1) Allowed amount--Has the meaning assigned by Insurance Code §38.402, concerning Definitions.

(2) Center--The Center for Healthcare Data at The University of Texas Health Science Center at Houston.

(3) Data--Has the meaning assigned by Insurance Code §38.402.

(4) Data files--Files submitted under this subchapter, including dental claims data files, enrollment and eligibility data files, medical claims data files, pharmacy claims data files, and provider files.

(5) Database--Has the meaning assigned by Insurance Code §38.402.

(6) Dental claims data file--A file that includes data as specified in the Texas APCD CDL about any dental claim or encounter for which some action has been taken on the claim during the reporting period, including payment, denial, adjustment, or other modification.

(7) Enrollment and eligibility data file--A file that provides identifying data as specified in the Texas APCD CDL about a person who is enrolled and eligible to receive health care coverage from a payor, whether or not the member used services during the reporting period, with one record per member, per month, per plan.

(8) Medical claims data file--A file that includes data as specified in the Texas APCD CDL about medical claims and other en-

counter information for which some action has been taken on the claim during the reporting period, including payment, denial, adjustment, or other modification.

(9) Payor--Has the meaning assigned by Insurance Code §38.402.

(10) Pharmacy claims data file--A file that includes data as specified in the Texas APCD CDL about all claims filed by pharmacies, including mail order and retail dispensaries, for prescriptions that were dispensed, processed, and paid during the reporting period.

(11) Provider file--A file that includes information as specified in the Texas APCD CDL about all providers (regardless of network status) that submitted claims that are included in the medical claims data file, dental claims data file, or pharmacy claims data file, with a separate record provided for each unique physical location for a provider who practices in multiple locations.

(12) Qualified research entity--Has the meaning assigned by Insurance Code §38.402.

(13) Stakeholder advisory group--Has the meaning assigned by Insurance Code §38.402.

(14) Submission guide--The document entitled "The Texas All-Payor Claims Database Data Submission Guide," created by the Center, that outlines administrative procedures and provides technical guidance for submitting data files.

(15) Texas APCD CDL--The standardized format, or common data layout (CDL), for All-Payor Claims Database (APCD) data files published by the Center and based on the "All-Payer Claims Database Common Data Layout" established by the National Association of Health Data Organizations and used with permission.

(16) Texas resident member--Any policyholder or certificate holder (subscriber) of a plan issued in Texas whose residence is within the state of Texas and all covered dependents, regardless of where the dependent resides.

§21.5403. Texas APCD Common Data Layout and Submission Guide.

(a) Payors must submit complete and accurate data files for all applicable plans as required by this subchapter and consistent with the Texas APCD CDL v1.08, released January 21, 2022. The Texas APCD CDL is available on the Center's website and:

(1) is modeled on the "All-Payer Claims Database Common Data Layout" published by the National Association of Health Data Organizations and used with permission;

(2) identifies which data elements payors are required to submit in each data file and which data elements are optional, consistent with Insurance Code §38.404(c), concerning Establishment and Administration of Database; and

(3) identifies the record specifications, definitions, code tables, and threshold levels for each required data element.

(b) The Center may issue technical guidance that provides flexibility regarding the existing requirements contained in the Texas APCD CDL, such as removing required data elements, clarifying specifications, increasing the maximum length, or decreasing the minimum threshold. However, such guidance may not modify statutory requirements, impose more stringent requirements, or increase the scope of the data being collected.

(c) The Center will establish, evaluate, and update data collection procedures within a submission guide, consistent with Insurance Code §38.404(f), concerning Establishment and Administration of Database. Notwithstanding subsection (b) of this section, in the event of an inconsistency between this subchapter and the submission guide, this subchapter controls.

§21.5404. Data Submission Requirements.

(a) Payors must submit the data files required by subsection (c) of this section to the Center according to the schedule provided in §21.5405 of this title (relating to Timing and Frequency of Data Submissions). Payors are responsible for submitting or arranging to submit all applicable data under this subchapter, including data with respect to benefits that are administered or adjudicated by another contracted or delegated entity, such as carved-out behavioral health benefits or pharmacy benefits administered by a pharmacy benefit manager. Payors may arrange for a third-party administrator or delegated or contracted entity to submit data on behalf of the payor, but may not submit data that duplicates data submitted by a third party. The Texas Health and Human Services Commission may submit data on Medicaid managed care plans on behalf of all applicable payors. A payor that acts as an administrator on behalf of a health benefit plan or dental plan for which reporting is optional per Insurance Code §38.407, concerning Certain Entities Not Required to Submit Data, must ask the plan sponsor in writing whether it elects or declines to participate in or submit data to the Center and may include data for such plans within the payor's data submission. A response from the plan sponsor should be in writing.

(b) Payors or their designees must register with the Center each year to submit data, consistent with the instructions and procedures contained in the submission guide. Payors must communicate any changes to registration information by contacting the Center within 30 days using the contact information provided in the submission guide. Upon registration, the Center will assign a unique payor code and submitter code to be used in naming the data files and provide the credentials and information required to submit data files.

(c) Payors must submit the following files, consistent with the requirements of the Texas APCD CDL:

(1) enrollment and eligibility data files;

(2) medical claims data files;

(3) pharmacy claims data files;

(4) dental claims data files; and

(5) provider files.

(d) Payors must package all files being submitted into a single zip file that is encrypted according to the standard provided in the submission guide. Payors must submit the encrypted zip file to the Center using one of the following file submission methods:

(1) save the file on a Universal Serial Bus (USB) flash drive and use a secure courier to deliver the USB disk to the database according to delivery instructions provided in the submission guide;

(2) transmit the file to the Center's Managed File Transfer servers using the Secure File Transport Protocol (SFTP) and the credentials and transmittal information provided upon registration;

(3) upload files from an internet browser using the Hypertext Transfer Protocol Secure (HTTPS) protocol and the credentials and transmittal information provided upon registration; or

(4) transmit the filing using a subsequent electronic method as provided in the data submission guide.

(e) Payors must name data files and zip files consistent with the file naming conventions specified by the Center in the submission guide.

(f) Payors must format all data files as standard 8-bit UCS Transformation Format (UTF-8) encoded text files with a ".txt" file extension and adhere to the following standards:

(1) use a single line per record and do not include carriage returns or line feed characters within the record;

(2) records must be delimited by the carriage return and line feed character combination;

(3) all data fields are variable field length, subject to the constraints identified in the Texas APCD CDL, and must be delimited using the pipe (|) character (ASCII=124), which must not appear in the data itself;

(4) text fields must not be demarcated or enclosed in single or double quotes;

(5) the first row of each data file must contain the names of data columns as specified by the Texas APCD CDL;

(6) numerical fields (e.g., ID numbers, account numbers, etc.) must not contain spaces, hyphens, or other punctuation marks, or be padded with leading or trailing zeroes;

(7) currency and unit fields must contain decimal points when appropriate;

(8) if a data field is not to be populated, a null value must be used, consisting of an empty set of consecutive pipe delimiters (||) with no content between them.

(g) Data files must include information consistent with the Texas APCD CDL that enables the data to be analyzed based on the market category, product category, coverage type, and other factors relevant for distinguishing types of plans.

(h) Payors must include data in medical, pharmacy, and dental claims data files for a given reporting period based on the date the claim is adjudicated, not the date of service associated with the claim. For example, a service provided in March, but adjudicated in April, would be included in the April data report. Likewise, any claim adjustments must be included in the appropriate data file based on the date the adjustment was made and include a reference that links the original claim to all subsequent actions associated with that claim. Payors must report medical, pharmacy, and dental claims data at the visit, service, or prescription level. Payors must also include claims for capitated services with all medical, pharmacy, and dental claims data file submissions.

(i) Payors must include all payment fields specified as required in the Texas APCD CDL. With respect to medical, pharmacy, and dental claims data file submissions, payors must also:

(1) include coinsurance and copayment data in two separate fields;

(2) clearly identify claims where multiple parties have financial responsibility by including a Coordination of Benefits, or COB, notation; and

(3) include denied claims and identify a denied claim either by a denied notation or assigning eligible, allowed, and payment amounts of zero. When a claim contains both fully processed or paid service lines and partially processed or denied service lines, the payor must include all service lines as part of the claims data file. Payors are not required to include data for rejected claims or claims that are denied because the patient was not an eligible member.

(j) Every data file submission must include a control report that specifies the count of records and, as applicable, the total allowed amount and total paid amount.

(k) Unless otherwise specified, payors must use the code sources listed and described in the Texas APCD CDL within the member eligibility and enrollment data file and medical, pharmacy, and dental claims data file and provider file submissions. When standardized values for data fields are available and stated within the Texas APCD CDL, a payor may not submit data that uses a unique coding system.

(l) Payors must use the member's social security number as a unique member identifier (ID) or assign an alternative unique member ID as provided in this subsection.

(1) If a payor collects the social security number for the subscriber only, the payor must assign a discrete two-digit suffix for each member under the subscriber's contract.

(2) If a payor does not collect the subscriber's social security number, the payor must assign a unique member ID to the subscriber and the member in its place. The payor must also use a discrete two-digit suffix with the unique member ID to associate members under the same contract with the subscriber.

(3) A payor must use the same unique member ID for the member's entire period of coverage with that payor. A payor must use the same unique member ID, even if the member's name, plan type, or other enrollment information changes. If a change in the unique member ID or the use of two different unique member IDs for the same individual is unavoidable, the payor must provide documentation linking the member IDs in the form and method provided by the Center.

(m) When standardized values for data variables are available and stated within the Texas APCD CDL, no specific or unique coding systems will be permitted as part of the health care claims data set submission.

(n) Within the enrollment and eligibility data files, payors must report member enrollment and eligibility information at the individual member level. If a member is covered as both a subscriber and a dependent on two different policies during the same month, the payor must submit two member enrollment and eligibility records. If a member has two different policies for two different coverage types, the payor must submit two member enrollment and eligibility records.

(o) Payors must include a header and trailer record in each data file submission according to the formats described in the Texas APCD CDL. The header record is the first record of each separate file submission, and the trailer record is the last.

§21.5405. Timing and Frequency of Data Submissions.

(a) Payors must submit monthly data files according to the following schedule:

(1) January data must be submitted no later than May 7 of that year;

(2) February data must be submitted no later than June 7 of that year;

(3) March data must be submitted no later than July 7 of that year;

(4) April data must be submitted no later than August 7 of that year;

(5) May data must be submitted no later than September 7 of that year;

(6) June data must be submitted no later than October 7 of that year;

(7) July data must be submitted no later than November 7 of that year;

(8) August data must be submitted no later than December 7 of that year;

(9) September data must be submitted no later than January 7 of the following year;

(10) October data must be submitted no later than February 7 of the following year;

(11) November data must be submitted no later than March 7 of the following year; and

(12) December data must be submitted no later than April 7 of the following year;

(b) Except as provided in subsections (c) and (d) of this section, payors must submit test data files, historical data files, and monthly data files according to the dates specified by the Center, subject to the following requirements:

(1) the Center will provide notice of the timeline for payors to submit registration and test data no later than 90 days before the data is due;

(2) the Center will provide notice of the timeline for submitting historical data, which must include data for reporting periods spanning from January 1, 2019, to the most recent monthly reporting period, no later than 120 days before the data is due; and

(3) the Center will provide notice of the timeline for submitting monthly data no later than 180 days before the commencement of the monthly data submission, and the first monthly data submission date will be no sooner than January 1, 2023.

(c) A payor with fewer than 10,000 covered lives in plans that are subject to reporting under this subchapter as of December 31 of the previous year must begin reporting no later than 12 months after the dates otherwise required, as specified by the Center, consistent with subsection (a) of this section. The payor must register with the Center to document the payor's eligibility for this extension.

(d) A payor may request a temporary exception from one or more requirements of this subchapter or the Texas APCD CDL by submitting a request to the Center no less than 30 calendar days before the date the payor is otherwise required to comply with the requirement. Except as provided in paragraph (2) of this subsection, the Center may grant an exception if the payor demonstrates that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance.

(1) An exception may not last more than 12 consecutive months.

(2) An exception may not be granted from any requirement contained in Insurance Code Chapter 38, Subchapter I.

(e) A payor that is unable to meet the reporting schedule provided by this section may submit a request for an extension to the Center before the reporting due date. The Center may grant a request for good cause at its discretion.

(f) The Center will assess each data submission to ensure the data files are complete, accurate, and correctly formatted.

(g) The Center will communicate receipt of data, inform the payor of the data quality assessments, and specify any required data corrections and resubmissions.

(h) Upon receipt of a resubmission request, the payor must respond within 14 calendar days with either a revised and corrected data file or an extension request.

(i) If a payor fails to submit required data or fails to correct submissions rejected due to errors or omissions, the Center will provide written notice to the payor. If the payor fails to provide the required information within 30 calendar days following receipt of said written notice, the Center will notify the department of the failure to report. The department may pursue compliance with this subchapter via any appropriate corrective action, sanction, or penalty that is within the authority of the department.

§21.5406. Stakeholder Advisory Group Terms.

(a) Except as provided by subsections (b) and (c) of this section, members of the stakeholder advisory group designated under Insurance Code §38.403(b)(2) - (4), concerning Stakeholder Advisory Group, serve fixed terms of three years.

(b) Initial terms of the stakeholder advisory group will end December 31, 2024.

(c) Subsequent designations of the stakeholder advisory group will begin January 1, 2025, and will be staggered as follows:

(1) two members representing the business community, as provided by Insurance Code §38.403(b)(4)(A), and two members representing consumers, as provided by Insurance Code §38.403(b)(4)(B), with terms to expire December 31, 2026;

(2) the member designated by the Teacher Retirement System of Texas; two members representing hospitals, as provided by Insurance Code §38.403(b)(4)(C); and two members representing health benefit plan issuers, as provided by Insurance Code §38.403(b)(4)(D), with terms to expire December 31, 2027; and

(3) the member designated by the Employees Retirement System; two members representing physicians, as provided by Insurance Code §38.403(b)(4)(E); and two members not professionally involved in the purchase, provision, administration, or review of health care services, supplies, or devices, or health benefit plans, as provided by Insurance Code §38.403(b)(4)(F), with terms to expire December 31, 2028.

(d) If a member does not complete the member's three-year term, a replacement member must be designated to complete the remainder of the term. A member designated by the Center to serve a partial term of less than two years will not be prevented from serving for an additional two consecutive terms.

(e) Except as provided by subsection (d) of this section, members designated by the Center under Insurance Code §38.403(b)(4) may not serve more than two consecutive terms.

(f) Members and prospective members of the stakeholder advisory group are subject to the conflicts of interest and standards of conduct provisions in paragraphs (1) - (4) of this subsection.

(1) A prospective member of the stakeholder advisory group must disclose to the designating entity any conflict of interest before being designated to the group.

(2) A member of the stakeholder advisory group must immediately disclose to the Center and the member's designating entity any conflict of interest that arises or is discovered while serving on the group.

(3) A conflict of interest means a personal or financial interest that would lead a reasonable person to question the member's objectivity or impartiality. An example of a conflict of interest is employment by or financial interest in an organization with a financial interest in work before the stakeholder advisory group, such as evaluating data requests from qualified research entities under Insurance

Code §38.404(e)(2), concerning Establishment and Administration of Database.

(4) A member of the stakeholder advisory group must comply with Government Code §572.051(a), concerning Standards of Conduct; State Agency Ethics Policy, to the same extent as a state officer or employee.

(g) A member may be removed from the stakeholder advisory group for good cause by the member's designating entity.

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

Filed with the Office of the Secretary of State on March 28, 2022.

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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 676-6584

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM

SUBCHAPTER K. HIGHER EDUCATION SAVINGS PLAN

34 TAC §7.103

The Comptroller of Public Accounts proposes amendments to §7.103, concerning tax benefits and securities laws exemptions.

The amendments to subsection (c) clarify that the plan manager will monitor the aggregate contributions rather than the account balance to determine whether an account has exceeded the amounts necessary to provide for the qualified higher education expenses of the beneficiary, as required under Internal Revenue Code, §529(b)(6).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. These proposal amends a current rule.

Mr. Reynolds also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposal would benefit the public by conforming the rule to the Internal Revenue Code. There would be no significant anticipated economic cost to the public.

Comments on the proposal may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, Comptroller of Public Accounts, at P.O. Box 13407, Austin, Texas 78711-3407 or at Linda.Fernandez@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Education Code, §54.702(a), which authorizes the Prepaid Higher Education Tuition Board in the Comptroller of Public Accounts to adopt rules to implement Education Code, Chapter 54, Subchapter G (Higher Education Savings Plan).

This amendment implements Education Code, Chapter 54, Subchapter G.

§7.103. Tax Benefits and Securities Laws Exemptions.

(a) Intent to satisfy tax exempt requirements. This subchapter, the savings plan, each savings trust agreement, and each savings trust account hereunder are intended to satisfy all requirements of:

(1) Internal Revenue Code, §529, and regulations thereunder; and

(2) federal securities laws.

(b) Media for making payments to savings trust accounts. Any payment of an amount due to a savings trust account under a savings trust agreement must be made in cash or by electronic funds transfer.

(c) Excess contributions prohibited.

(1) The maximum contribution limit [~~account balance~~] for a savings trust account shall be determined and published annually and shall be equal to the lesser of seven times the cost of one year of undergraduate tuition, room, board, and required fees, as determined and published for financial aid purposes, at a U.S. eligible educational institution that the board determines to be among the highest cost U.S. undergraduate eligible educational institutions, with the sum so computed then being rounded down to the nearest $5,000 increment; or a lesser amount determined by the board. The amount of money that may be contributed to a savings trust account shall be subject to the limit imposed under Internal Revenue Code, §529, taking into account [~~limited to the amount, if any, by which the maximum account balance exceeds the balance of that savings trust account adjusted by~~] the aggregation described in paragraph (3) of this subsection. To the extent that a contribution exceeds the amount otherwise permitted by this section, such excess will be promptly refunded, without interest or earnings, to the account's owner. A savings trust account for a designated beneficiary that has reached the maximum contribution limit [~~account balance~~] may continue to accrue investment earnings. In the event that the board does not determine the maximum contribution limit [~~account balance~~] for any year, the maximum contribution limit [~~account balance~~] in effect during the previous year will continue in effect.

(2) The plan manager shall monitor contributions to each savings trust account that is in the manager's custody, to ensure compliance with this subsection and any other applicable limits on contributions. The plan manager shall maintain records to ensure that the amounts paid or contributed on behalf of each designated beneficiary are not in excess of the funds required to meet the qualified higher education expenses of the beneficiary pursuant to Internal Revenue Code, §529(b)(6).

(3) In application of these rules, the plan manager shall determine whether the beneficiary of a savings trust account is the beneficiary of any other qualified tuition program under Internal Revenue Code, §529, that is maintained by the state, and shall enforce the foregoing limitation on contributions by aggregating, as appropriate, the

contributions to [~~refund value of~~] all prepaid tuition contracts and the contributions to [~~balance of~~] all savings trust accounts maintained by the state for the same designated beneficiary. For purposes of this paragraph, any qualified rollover under Internal Revenue Code, §529, from another qualified tuition program of this state into a savings trust account for the same designated beneficiary shall not be treated as a new contribution to the savings trust account.

(d) Separate accountings. A plan manager shall maintain a separate accounting for each savings trust account in the manager's custody.

(e) Investment and earnings control prohibited. Except as provided in §7.106(f) of this title (relating to Plan Managers), neither the owner of a savings trust account nor the beneficiary of that account may control or direct the investment of:

(1) the principal of the account; or

(2) any earnings of the account.

(f) Pledge of interest as security prohibited. Neither the owner of a savings trust account nor the beneficiary of that account may:

(1) assign any interest in the account for the benefit of a creditor;

(2) use any interest in the account as security or collateral for a loan or other obligation; or

(3) otherwise alienate, sell, transfer, assign, pledge, encumber, or charge any interest in the account.

(g) Reports. A plan manager shall make reports that are required by:

(1) Internal Revenue Code, §529; and

(2) any other applicable tax law.

(h) Policies and procedures. Except where in conflict with Education Code, Chapter 54, Subchapter G, or this subchapter, the board may adopt any policy or procedure, and such policy or procedure automatically amends each outstanding savings trust agreement as necessary for:

(1) the savings plan to obtain or maintain qualification as a qualified tuition program under Internal Revenue Code, §529;

(2) owners and beneficiaries to obtain or maintain the federal income tax benefits or favorable treatment that is provided by Internal Revenue Code, §529; or

(3) the savings plan to obtain or maintain exemption from registration under federal securities laws.

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

Filed with the Office of the Secretary of State on March 22, 2022.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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SUBCHAPTER N. TEXAS ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM

34 TAC §7.198

The Comptroller of Public Accounts proposes new §7.198, concerning ABLE program advisory committee. The new section will be under Chapter 7, Prepaid Higher Education Tuition Program, Subchapter N, Texas Achieving a Better Life Experience (ABLE) Program.

The new section implements Senate Bill 702, 87th Legislature, Regular Session, 2021. Senate Bill 702 adds Education Code, §54.6181, which allows the Texas Prepaid Higher Education Tuition Board ("Board") by rule to establish an advisory committee to make recommendations to the board on programs, rules, and policies administered by the board.

Subsection (a) establishes the advisory committee and outlines the role, responsibility and goal of the committee.

Subsection (b) sets forth the number of committee members and their required backgrounds.

Subsection (c) gives the comptroller authority to designate one appointed member to act as the presiding officer of the committee

Subsection (d) designates the term length for members appointed to the committee.

Subsection (e) gives the comptroller authority to make initial appointments to the committee and fill vacancies.

Subsection (f) requires the advisory committee to meet at least once every six months or more frequently if the presiding officer or the comptroller finds it necessary.

Subsection (g) sets quorum for the committee at two-thirds of the appointed members.

Subsection (h) requires members to complete training prior to becoming an active voting member of the committee.

Subsection (i) provides that committee members are not entitled to compensation or reimbursement for travel expenses.

Subsection (j) requires the committee to adopt an ethics and conflicts of interest policy.

Subsection (k) requires the board to evaluate the continuing need for the committee at least once every two years and gives the board the authority to abolish the committee if it is no longer needed.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposal would benefit the public by providing for advisory support to the ABLE program in accordance with current statute.

There would be no significant anticipated economic cost to the public.

Comments on the proposal may be submitted to Linda Fernandez, Director, Educational Opportunities and Investment Division, Comptroller of Public Accounts, at P.O. Box 13407, Austin, Texas 78711-3407 or at Linda.Fernandez@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new section is proposed under Education Code, §54.6181, which permits the board to establish advisory committees by rule.

The new section implements Education Code, Chapter 54, Subchapter J (Texas Achieving a Better Life Experience (ABLE) Program) and Section 54.6181.

§7.198. ABLE Program Advisory Committee.

(a) The ABLE Program Advisory Committee is established to provide to the Board the committee's collective expertise as members, advocates, financial advisors, or supporters of the disability community regarding the administration of and experiences with the ABLE Program. The role and responsibility of the advisory committee is to advise and make recommendations to the Board. The goal of the advisory committee is to support the Board in ensuring that the needs of ABLE Program participants are met.

(b) The comptroller shall appoint at least five and not more than seven members to the advisory committee, including at least one member from each of the following groups:

(1) persons with a disability who qualify for the program;

(2) family members of a person with a disability who qualifies for the program;

(3) representatives of disability advocacy organizations; and

(4) representatives of the financial community.

(c) The comptroller shall designate one appointed member to act as the presiding officer of the advisory committee.

(d) The initial members appointed to the advisory committee shall serve for staggered terms, starting on the date of their appointment, with the first two appointees serving for a six-year term, the next two appointees serving for a four-year term and the remaining appointees serving for a two-year term. Members appointed to replace the initial appointed members shall serve for six-year terms from the date of their appointment.

(e) All advisory committee members are appointed by and serve at the pleasure of the comptroller. In the event of any vacancy occurring on the advisory committee, the comptroller shall appoint a replacement who shall serve the remainder of the unexpired term.

(f) The advisory committee shall meet at least once every six months or more frequently as the presiding officer or comptroller determines is necessary to carry out the responsibilities of the committee.

(g) Two-thirds of the appointed members shall constitute a quorum.

(h) Members must complete training provided by the comptroller prior to being an active voting member of the committee.

(i) A member of the advisory committee is not entitled to compensation or reimbursement for travel expenses.

(j) In addition to any requirements provided by law, the advisory committee shall adopt and enforce an ethics and conflicts of interest policy that applies to all members of the advisory committee.

(k) The continuing need for the advisory committee shall be evaluated by the Board at least once every two years; the Board may abolish the advisory committee at any time it determines that the advisory committee is no longer needed.

(l) The advisory committee shall adopt a policy to ensure it complies with any applicable provisions of Government Code, Chapter 551 regarding open 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.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 854. BUSINESS ENTERPRISES OF TEXAS

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 854, relating to Business Enterprises of Texas:

Subchapter A. General Provisions and Program Operations, §854.10 and §854.11

Subchapter B. License and Assignments, §§854.20 - 854.23

Subchapter C. Expectations of TWC and Managers, §§854.40 - 854.43

Subchapter D. BET Elected Committee of Managers, §854.60

Subchapter E. Action Against a License, §§854.80 - 854.83

TWC proposes to repeal the following section of Chapter 854, relating to Business Enterprises of Texas:

Subchapter A. General Provisions and Program Operations, §854.12

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

On May 21, 2019, TWC adopted rules in 40 TAC Chapter 854, relating to the Business Enterprises of Texas (BET).

On May 23, 2019, TWC submitted revised BET Program rules to the Rehabilitation Services Administration (RSA) for approval. The Randolph Sheppard Act (20 United States Code §107) requires rules governing the BET Program first be reviewed and approved by RSA before becoming effective. The federally mandated BET Elected Committee of Managers (ECM) agreed with the revisions and communicated its support to RSA via email

on May 24, 2019. The revised program rules included changes requested by the ECM and conforming changes to incorporate the BET rules into TWC administrative rules in 40 TAC Part 20 following transfer of the program to TWC from legacy Texas Department of Assistive and Rehabilitative Services.

The BET Program rules adopted by TWC went into effect on September 1, 2019; however, RSA had not returned approval of the rules by that date.

On April 22, 2020, RSA responded to TWC's May 2019 submission, offering comments, questions, and required changes related to the revised BET Program rules. The required changes included provisions that were not revised by TWC in the 2019 submission and that were previously approved by RSA. The information presented by RSA was supplied to the ECM.

TWC sought clarification from RSA about the specific adjustments required to obtain approval of the revised rules as submitted. Upon gaining a better understanding of the requirements and making adjustments to comply, RSA approved the revised rules on November 16, 2020. The ECM was notified that RSA approved the rules with some required adjustments. The ECM agreed with the RSA adjustments in writing on May 6, 2021.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

TWC proposes the following amendments to Subchapter A:

§854.10. Definitions

Section 854.10 is amended to add the definitions for "Agency" and "VRD director."

New §854.10(2) defines "Agency" as TWC, which is the state licensing agency for the Randolph-Sheppard program titled the Business Enterprises of Texas. Subsequent definitions are renumbered accordingly.

New §854.10(28) defines "VRD director" as the director of TWC's designated state unit titled the Vocational Rehabilitation Division.

§854.11. General Policies

Section 854.11(b) is amended to change "citizens of Texas" to "reside or are physically present in Texas" to clarify that legally blind individuals who reside or are physically present in Texas can operate BET facilities.

Section 854.11(c) is amended to clarify that the term "Management" includes "being physically present to perform" the supervision duties.

Section 854.11(h) is amended to add "race" to the nondiscrimination clause and §854.11(i) is amended to include "declared emergencies" in the description of emergencies.

§854.12. Consultants

Section 854.12 is repealed because the section relating to consultants is no longer needed.

SUBCHAPTER B. LICENSE AND ASSIGNMENTS

TWC proposes the following amendments to Subchapter B:

§854.20. Eligibility and Application Process

Section 854.20(a) is amended to clarify prerequisites for training. In §854.20(a)(2) "residing" in Texas is changed to "physically present" in Texas, and in §854.20(a)(5), "health and stamina" is changed to "physical capability."

Section 854.20(b) is amended to include in the application process that notification of the interview results may be provided by mail if the applicant does not have access to email.

§854.21. BET Licenses and Continuing Education Requirement

Section 854.21 is amended to clarify the property right statement. Section 854.21(a)(4) is amended to read that a license shall not create any property right for the licensee to state or federal property including state- or federally owned equipment.

§854.22. Initial Assignment Procedures

Section 854.22(b)(6), which states "any other circumstances on a case-by-case basis," is removed from the factors that the BET director will consider when determining the manager's initial assignment.

§854.23. Career Advancement Assignment Procedures

Section 854.23(b)(4) is amended to correct a reference. Section 854.81 relates to Administrative Action Based on Unsatisfactory Performance, not §854.41.

SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS

TWC proposes the following amendments to Subchapter C:

§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables

Section 854.40(c) is amended to clarify that TWC's purchase of necessary equipment for placement away from the facility and remove the sentence regarding the manager's responsibilities relating to the off-site equipment.

Section 854.40(f) is amended to add paragraph (3) to state that TWC has the right to perform required maintenance and require the manager to reimburse the Agency for that maintenance.

Section 854.40(g) is amended to remove the language stating that the vendors will be informed by TWC staff of the procedures regarding payment for services.

§854.41. Set-Aside Fees

Section 854.41(a)(4) is amended to replace "Texans" with "individuals physically present in Texas." Section 854.41(b)(5) is amended to clarify that the use of funds for retirement, health insurance, or paid sick and vacation leave will be determined by the majority vote of licensed managers.

§854.42. Duties and Responsibilities of Managers

Section 854.42(d) is amended to state that managers shall dress and act in an appropriate manner and §854.42(o) is amended to state that copies of evidence that needs to be preserved for an audit or review will be supplied to the manager within 90 business days.

§854.43. Responsibilities of the Texas Workforce Commission

Section 854.43(c) is amended to state the ECM will actively participate in the setting of price ranges charged in facilities.

SUBCHAPTER D. BET Elected Committee of Managers

TWC proposes the following amendments to Subchapter D:

§854.60. BET Elected Committee of Managers' Duties and Responsibilities

Section 854.60(c)(2) is amended to replace "Texans" with "individuals physically present in Texas."

SUBCHAPTER E. Action Against a license

TWC proposes the following amendments to Subchapter E:

§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance

Section 854.80(a)(2) is amended to add "with or without reasonable accommodations" to the cause for termination for a licensee who becomes permanently disabled and is unable to perform the essential functions to operate and maintain the facility.

§854.81. Administrative Action Based on Unsatisfactory Performance

Section 854.81(a) is amended to clarify the causes for administrative action based on unsatisfactory performance.

Section 854.81(b) is deleted to remove the administrative action pending an appeal and the subsequent subsections are relettered accordingly.

Relettered §854.81(b)(5)(D) and (c)(2)(A) are amended to include "via mail or electronically via email" for notifications between the manager and TWC.

Relettered §854.81(d) is amended to include the reference to §854.82(e) regarding full evidentiary hearings.

§854.82. Procedures for Resolution of Manager's Dissatisfaction

Section 854.82 is amended to remove subsection (b)(2) and (3) from actions not subject to appeal and the statement of agency sovereign immunity in subsection (c). The subsequent subsections have been relettered accordingly.

Relettered §854.82(d) is amended to clarify the informal procedures in paragraphs (1), (3), and (4) and paragraph (6) is amended to clarify that upon conclusion of mediation, the mediator would share in writing the results of mediation.

Relettered §854.82(e)(3) is amended to clarify the time that a manager needs to request an evidentiary hearing and paragraph (4) is amended to clarify the request for the hearing must be in writing and transmitted to the VRD director by mail or email.

§854.83. Establishing and Closing Facilities

Section 854.83(a) is amended to remove paragraph (2), which is the description of action required if it is determined that a blind individual cannot properly operate a vending facility.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means 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 US Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent 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. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend Chapter 854 to incorporate the changes that were approved by RSA.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC determined that during the first five years the amendments will be in effect:

--the amendments will not create or eliminate a government program;

--implementation of the amendments will not require the creation or elimination of employee positions;

--implementation of the amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the amendments will not require an increase or decrease in fees paid to TWC;

--the amendments will not create a new regulation;

--the amendments will not expand, limit, or eliminate an existing regulation;

--the amendments will not change the number of individuals subject to the rules; and

--the amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as these rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that the BET Program rules in 40 TAC Chapter 854 will reflect the language agreed upon by RSA in accordance with the Randolph Sheppard Act.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. PUBLIC COMMENT

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov. Comments must be received no later than May 9, 2022.

SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

40 TAC §854.10, §854.11

STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The proposed rules affect Texas Labor Code, particularly Chapter 355.

§854.10. Definitions.

The following words and terms, when used in this chapter [~~subchapter~~], shall have the following meanings, unless the context clearly indicates otherwise. Unless expressly provided otherwise, words in the present or past tense include the future tense, and the singular includes the plural, and the plural includes the singular.

(1) Act--Randolph-Sheppard Act (20 USC, Chapter 6A, §107 et seq.).

(2) Agency--The Texas Workforce Commission, which is the state licensing agency for the Randolph-Sheppard program titled the Business Enterprises of Texas.

(3) [~~(2)~~] Application for Training--The "BET Application for Training" form used by VR customers to apply for prerequisite trainings that is a required prerequisite to be considered for a license.

(4) [~~(3)~~] Assignment Application--The "BET Facility Assignment Application" form used by licensees to apply for a facility.

(5) [~~(4)~~] BET--Business Enterprises of Texas.

(6) [~~(5)~~] BET assignment--The document that sets forth the terms and conditions for management of a BET facility by the individual named as manager.

(7) [~~(6)~~] BET director--The administrator of Business Enterprises of Texas; or, if there is no individual in that capacity, the individual designated by the VRD director to perform that function; or if there is none, the VRD director.

(8) [~~(7)~~] BET facility--Automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and other equipment that may be operated by BET managers and that are necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of tickets for any lottery authorized by state law.

(9) [~~(8)~~] BET manual--"Business Enterprises of Texas Manual of Operations," which contains this subchapter adopted by the Agency and related instructions and procedures by which BET facilities are to be managed.

(10) [~~(9)~~] Blind (individual who is)--An individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select.

(11) [~~(10)~~] Business day--A day on which state agencies are officially required to be open during their normal business hours.

(12) [~~(11)~~] ECM--Elected Committee of Managers--A committee representative of BET licensees pursuant to 20 USC §107b-1(3) of the Randolph-Sheppard Act.

(13) [~~(12)~~] Expendables--Items that require a low capital outlay and have a short life expectancy, including, but not limited to, small wares, thermometers, dishes, glassware, flatware, sugar and napkin dispensers, salt and pepper shakers, serving trays, kitchen knives, spreaders, serving spoons, and ladles.

(14) [~~(13)~~] Immediate family--Any individual related within the first degree of affinity (marriage) or consanguinity (blood) to the individual involved.

(15) [~~(14)~~] Individual with a significant disability--An individual who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility or communication).

(16) [~~(15)~~] Initial assignment--The first BET facility to which a manager is assigned after being licensed.

(17) [~~(16)~~] Instruction by Agency staff members--Instructions that are proper and authorized and in accordance with applicable statutes and program rules, regulations, and procedures.

(18) [~~(17)~~] Level 1 facility--A BET facility that in the previous year generated a net income after set-aside fees equal to or less than 170 percent of the median net income after set-aside fees of all BET managers for the previous year or, in the case of a new BET facility, is reasonably expected to generate that income.

(19) [~~(18)~~] Level 2 facility--A BET facility that in the previous year generated a net income after set-aside fees greater than 170 percent of the median net income after set-aside fees of all BET managers for the previous year or, in the case of a new BET facility, is reasonably expected to generate that income.

(20) [~~(19)~~] Licensee--A blind individual who has been licensed by the Agency as qualified to apply for and operate a BET facility, and which shall have the same meaning assigned to "blind licensee" in 34 CFR §395.1.

(21) [~~(20)~~] Manager--A licensee who is operating a BET facility, and which shall have the same meaning assigned to "vendor" in 34 CFR §395.1.

(22) [~~(21)~~] Net sales--All sales, excluding sales tax.

(23) [~~(22)~~] Other income--Money received by a manager from sources other than direct sales, such as vending commissions or subsidies.

(24) [~~(23)~~] Sanitation and cleaning supplies--Items that require a low capital outlay and have a short life expectancy, such as, by way of illustration and not limitation, mops, brooms, detergents, bleach, gloves, oven mitts, trash bags, food wrapping supplies, foil, and cleaning supplies for food equipment.

(25) [~~(24)~~] State property--Lands and buildings owned, leased, or otherwise controlled by the State of Texas; and equipment and facilities purchased and/or owned by the State of Texas.

(26) [~~(25)~~] Substantial interest--An individual has a substantial interest if:

(A) in an assignment decision:

(i) the individual will benefit financially from the assignment decision; and[~~;~~]

(ii) funds received by the individual from the business exceed 10 percent of the individual's gross income for the previous year; or

(B) if he or she is related to an individual in the first degree of affinity or consanguinity who has a substantial interest as defined in subparagraph (A) of this paragraph.

(27) [~~(26)~~] Vending machine--For the purpose of assigning vending machine income, a coin- or currency-operated machine that dispenses articles or services, except those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

(28) VRD director--The director of the Agency's designated state unit titled the Vocational Rehabilitation Division.

§854.11. General Policies.

(a) Objectives. BET objectives shall be:

(1) to provide employment opportunities for qualified individuals; and

(2) to provide an ongoing training program for managers that encourages them to advance their upward mobility career opportunities within the program.

(b) Relationship of BET to VRD Services. The intent of BET, as authorized by the Act and the Texas Labor Code, is to stimulate and enlarge the economic opportunities for legally blind individuals who reside or are physically present in Texas to operate BET facilities in [~~the citizens of~~] Texas [~~who are legally blind~~] by establishing a vending facility program in which individuals who need employment are given priority in the operation of vending facilities selected and installed by the Agency. The Agency is required to administer BET in accordance with the Agency's vocational rehabilitation objectives. Therefore, a customer receiving services from VRD whose employment goal is to be a licensed manager shall have reached an employment outcome, as that term is used in the Rehabilitation Act of 1973, as amended, when the customer is licensed by the Agency and is managing a BET facility. The licensed manager shall not be considered an employee of the Agency or of state or federal government.

(c) Full-time employment. Managing a BET facility shall constitute full-time employment. "Full-time" shall mean "being actively engaged in the management of a BET facility for the number of hours necessary to achieve satisfactory operation of the facility." The manager shall be available for necessary visits by Agency staff to allow inspection, advice, and consultation as may be required to ensure satisfactory operation. "Management" means "being physically present to perform the personal supervision of the day-to-day operation of the assigned BET facility by the assigned manager."

(d) Subcontracting. The management of a BET facility shall not be subcontracted by a licensed manager except for temporary periods of time approved by the Agency and in those circumstances in which the Agency considers that subcontracting the operation of some parts of the facility is in the best interest of BET. Potential justifications for subcontracting include the following: business strategies in which a portion of the facility operation may be subcontracted so that the assigned manager may focus on another aspect of the facility; temporary events not to exceed six months in which the assigned manager is not capable of management duties due to illness, injury, or other events, as approved by the Agency; and the need for business expertise and resources beyond that available from BET. Any subcontracting shall require the prior written approval of the Agency. The approval of any subcontract is at the discretion of the Agency. This subsection does not apply to equipment or machines allowed to be placed within the facility and not owned by or arranged for by the Agency.

(e) Availability of funds. The administration of BET and the implementation of these policies are contingent upon the availability of funds for the purposes stated in this subchapter.

(f) BET manual. All BET policies adopted by the Agency shall be included in the BET manual. The BET director shall ensure that the manual and any revisions to it are provided to each licensee electronically or in the format requested by the licensee. The licensee shall be responsible for reading the manual and acknowledging in writing that he or she has read and understands its contents. The BET director shall ensure that the BET manual contains procedures from which licensees may obtain assistance in understanding BET policies and procedures.

(g) Accessibility of BET materials. All information produced by and provided to licensees by the Agency shall be in an accessible format. When possible, these materials are sent in the format requested by the licensee.

(h) Nondiscrimination.

(1) VR and BET participants. the Agency shall not discriminate against any blind individual who is participating in or who may wish to participate in BET on the basis of sex, age, religion, race, color, creed, national origin, political affiliation, or physical or mental impairment, if the impairment does not preclude satisfactory performance.

(2) BET facilities. Managers shall operate BET facilities without discriminating against any present or prospective supplier, customer, employee, or other individual who might come into contact with the facility on the basis of sex, age, religion, race, color, creed, national origin, political affiliation, or physical or mental impairment.

(i) Emergencies. The BET director is authorized to expend funds on an emergency basis to protect the state's investment in a BET

facility not to exceed $50,000 in a fiscal year or $5,500 per facility incident due to riot, war, fire, earthquake, hurricane, tornado, flood, or other disasters, governmental restrictions, labor disturbances, declared emergencies, or strikes.

(j) Temporary management. From time to time it becomes necessary to designate a temporary manager to an unassigned facility to ensure uninterrupted service to the host and customers. Temporary assignments shall be for the period stated in the assignment document. After the time frame stated in the assignment expires, the BET director shall review the temporary assignment and shall review the assignment every 90 days to determine the need for continuation of the temporary assignment. The temporary assignment shall terminate when a new manager is assigned to the facility. The Agency shall choose temporary managers from licensees; if a licensee is not available, the Agency may contract with a private entity. Before the Agency offers a licensee or a private entity a temporary opportunity, the regional BET staff, at a minimum, shall evaluate the following: the individual's willingness to serve for the stated temporary term; the qualifications and experience relevant to the current opportunity; and the documented management compliance history, along with other factors set out in Agency rules. The geographic BET staff shall provide its findings to the local ECM and seek a joint recommendation to BET management. BET management shall make the final determination. When more than one individual is recommended at the local level, BET management shall first give preference to managers available within the local ECM region and thereafter to the individual manager with a lower average historical income, to improve his or her income temporarily.

(k) Compliance with tax laws. Licensees and managers shall comply with state and federal tax laws and shall not have a tax lien against them.

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

Filed with the Office of the Secretary of State on March 22, 2022.

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Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: May 8, 2022
For further information, please call: (512) 689-9855

40 TAC §854.12

The rule is repealed under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The proposed repeal affects Texas Labor Code, particularly Chapter 355.

§854.12. Consultants.

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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Les Trobman
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Texas Workforce Commission
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SUBCHAPTER B. LICENSE AND ASSIGNMENTS

40 TAC §§854.20 - 854.23

The rules are proposed under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The proposed rules affect Texas Labor Code, particularly Chapter 355.

§854.20. Eligibility and Application Process.

(a) Prerequisites for training. To be eligible for BET training, a customer desiring a career with BET as an employment outcome in the vocational rehabilitation program shall:

(1) be at least 18 years of age;

(2) be a United States citizen physically present [~~residing~~] in Texas (a birth certificate or other appropriate documentation must be submitted with the application);

(3) be legally blind as defined by these rules;

(4) be proficient in math, reading, and writing, as demonstrated through CCRC testing, as well as in adaptive technology, including word processing spreadsheet use and e-mail communication, as demonstrated through a CCRC final assessment;

(5) have the physical capability [~~health and stamina~~] required to perform safely the basic functions of a manager;

(6) have mobility skills to operate a BET facility safely, as documented by a VR counselor or assessment verified by an orientation and mobility instructor;

(7) satisfactorily perform a Work Evaluation Training conducted with a current BET operator;

(8) not have engaged in substance abuse for the previous 12 months; and

(9) be in compliance with state and federal tax laws and not be subject to any tax liens.

(b) Application process. Each eligible customer interested in applying for BET training must obtain approval and an application from the regional VR manager. The application must be submitted to the BET director. An eligible customer has successfully participated in the CCRC program. Interviews will be conducted by the BET director and an appointed panel. An e-mail notification of the results will be sent to the applicant. Notification may be provided by mail if the applicant does not have access to email services.

§854.21. BET Licenses and Continuing Education Requirement.

(a) Natural persons [~~individuals~~]. Licenses to manage a BET facility shall be issued only to natural persons [~~individuals~~].

(1) Prerequisites. No individual may be licensed until the individual has satisfactorily completed all required BET training and otherwise continues to satisfy the criteria for entry into BET.

(2) Issuance. A license issued by the Agency shall contain the name of the licensee and the date of issue. The license shall be signed by the VRD director and the BET director on behalf of the Agency and the State of Texas.

(3) Display. The license or a copy of the license shall be displayed prominently in each BET facility to which the manager is assigned.

(4) Property right. A license shall not create any property right for [~~in~~] the licensee to state or federal property including state- or federally owned equipment [~~and shall be considered only as a means of informing the public and other interested parties that the licensee has successfully completed BET training and is qualified and authorized to operate a BET facility~~].

(5) Transferability. A license is not transferable.

(6) Term. A license issued by the Agency shall be valid for an indefinite period, subject, however, to termination or revocation under conditions specified in these rules that pertain to termination of a license for reasons other than unsatisfactory performance or administrative action.

(b) Annual continuing education requirements for licensees:

(1) The Agency and ECM conduct an annual training conference for all licensees to inform them of new BET developments and to provide instruction on relevant topics to enhance licensees' business competence and upward mobility in the program. Licensees must attend the Agency's training conference or an Agency-approved alternative training event every year to maintain their licenses and eligibility to bid on available facilities. They must document their attendance at the Agency training conference by signing attendance records provided at the conference. A licensee who is unable to attend the Agency training conference may satisfy the continuing education requirement by attending a BET-approved course or training conference. Such training includes, but is not limited to, attending the national training conferences for blind vendors conducted by the Randolph-Sheppard Vendors of America or by the National Association of Blind Merchants, or by completing a business-related course from the Hadley Institute for the Blind and Visually Impaired or a business-related course offered by an accredited community college.

(2) Licensees wishing to attend an alternative training course or conference must request approval through their local Agency staff. The local Agency staff forwards the request to the BET director for approval. The licensee must also provide proof of successful completion of any business-related course or attendance at a training conference through the local Agency staff to the BET director to receive credit for attendance. All costs associated with travel, lodging, meals, and registration when attending any training other than the Agency training conference will be the responsibility of the licensee.

(3) Licensees may use an alternative approved training course or training conference to satisfy the continuing education requirement only if they are unable to attend the Agency training conference because of personal medical reasons, the death of a family member, a medical emergency or serious medical condition of an immediate family member, or if there is not an Agency training conference offered during the licensee's 12-month evaluation period. Licensees must provide written documentation of the medical issues or death of a family member to their local Agency staff.

(4) Licensees who fail to complete continuing education requirements may be subject to administrative action up to and including termination of their licenses.

§854.22. Initial Assignment Procedures.

(a) This section defines the process for the initial assignments of managers. It is the goal of the process to provide a fair, unbiased, and impartial process for selection, transfer, and promotion.

(b) Initial assignment. When an individual completes BET training, the BET director shall make the initial assignment for the newly licensed individual. The initial assignment shall be for a minimum of 12 months. The BET director shall make the assignment based on the following factors, including but not limited to:

(1) availability of a Level 1 facility;

(2) recommendations from the BET training specialist and the ECM chair;

(3) licensee's training records;

(4) licensee's geographical concerns; and

(5) licensee's compliance with state and federal tax laws and not be subject to any tax liens.[~~; and~~]

[~~(6) any other circumstances on a case-by-case basis.~~]

§854.23. Career Advancement Assignment Procedures.

(a) Career advancement assignments. This section defines the process for the career advancement assignments of managers. It is the goal of the process to provide a fair, unbiased, and impartial process for selection, transfer, and promotion.

(1) Availability. All career advancement opportunities depend on the availability of BET facilities. No facility with a projected annual income equal to the annual median income level of all managers after set-aside fees shall be used for an initial assignment unless it has been advertised and made available to all licensees in the BET program and no one has been assigned to the facility as a result of the advertising process.

(2) Notice. As BET facilities become available and ready for permanent assignment, written notice of the availability shall be given to all licensees within 30 business days.

(3) On-site visits. An advertised facility shall be available for on-site visits upon reasonable notice by licensees interested in that facility assignment.

(b) Eligibility. To apply for an available facility, a licensee must meet the following requirements:

(1) The licensee shall have successfully managed a BET facility for a minimum of one year.

(2) The licensee shall be current on all accounts payable for the 12 months before the date of the facility announcement. Accounts payable include known debts to state and federal entities as well as any BET business-related debt. "Current" means "performing in accordance with written established or alternate payment plans associated with the accounts payable debts."

(3) The licensee shall be in compliance with state and federal tax laws and not be subject to any tax liens.

(4) The licensee shall not be on probation under §854.81 [~~§854.41~~] of this title (relating to Administrative Action Based on Unsatisfactory Performance).

(5) The licensee shall meet eligibility requirements of the facility's host organization, including, but not limited to:

(A) criminal background checks; and

(B) drug tests.

(6) The licensee shall not have submitted more than one insufficient funds check to the Agency within the 12 months before the date of the facility announcement.

(7) The licensee shall not have submitted more than one late report within the 12 months before the date of the facility announcement.

(8) If unassigned, the licensee shall have fulfilled all resignation requirements in the licensee's most recent facility assignment or be displaced and eligible to apply for a facility.

(9) The manager shall have an inventory of merchandise and expendables in the manager's current facility that the Agency has determined sufficient for its satisfactory operation.

(10) The licensee shall satisfy the Agency that he or she can maintain the merchandise and expendables required for the available facility.

(11) A licensee who has been placed on probation is not eligible for promotion and transfer for 30 days from the effective date of the most recent release from probation.

(12) A licensee who has been placed on probation twice within a 12-month period is not eligible for promotion or transfer for six months from the effective date of the most recent release from probation.

(13) A licensee who has been placed on probation three times within a two-year period is not eligible for promotion or transfer for one year from the effective date of the most recent release from probation.

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SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS

40 TAC §§854.40 - 854.43

The rules are proposed under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The proposed rules affect Texas Labor Code, particularly Chapter 355.

§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables.

(a) Survey. When a BET facility becomes available for assignment, Agency staff shall conduct a survey of the site to determine the fixtures, furnishings, and equipment required to allow the facility to operate in accordance with projections by Agency staff of the potential business model for the facility. When the facility is an existing one, the survey shall consider the need for replacement or repair of fixtures, furnishings, and equipment.

(b) Facility plan. Agency staff shall prepare a detailed listing of the requirements for fixtures, furnishings, and equipment for the facility, including specifications for each item required and a site plan of the facility depicting the placement of the fixtures, furnishings, and equipment within the facility. The facility shall be consistent with local ordinances as well as state and federal requirements.

(c) Acquisition, placement, and installation. When satisfied with the plan for the fixtures, furnishings, and equipment required for the facility, Agency staff shall procure the necessary fixtures, furnishings, and equipment to be placed or installed in the facility in accordance with the approved plans. The [~~With previous approval, the~~] Agency may also purchase necessary fixtures, furnishings, and equipment for placement away from the facility for off-site storage [~~or other approved reason. A manager's responsibilities as noted in rule apply to off-site equipment~~].

(d) Ownership.

(1) All state fixtures, furnishings, and equipment within the facility shall at all times remain the property of the State of Texas. The facility manager's use of all such fixtures, furnishings, and equipment shall be as a licensee only and in accordance with the BET Equipment Loan Agreement.

(2) The Agency shall have the sole authority to direct, control, transfer, and dispose of the fixtures, furnishings, and equipment.

(e) Modifications. No modifications or alterations shall be made to state-owned fixtures, furnishings, or equipment by any individual, firm, or entity without the express prior written approval of the Agency.

(f) Upkeep and maintenance.

(1) The manager assigned to a facility shall be provided with manuals, instructions, and guides electronically or in a format requested by the manager. These documents for state-owned fixtures, furnishings, and equipment within the facility should be in an accessible format.

(2) It shall be the responsibility of the manager to keep fixtures, furnishings, and equipment clean and sanitary and to perform maintenance required or recommended by the manufacturers or vendors of the fixtures, furnishings, and equipment. This must be in accordance with the BET instructions and equipment manuals.

(3) The Agency has the right to perform required maintenance and require the manager to reimburse the Agency for that maintenance.

(4) [~~(3)~~] The manager shall keep and maintain accurate records of all maintenance performed on fixtures, furnishings, and equipment. Any failure or refusal of the manager to perform the maintenance referred to in this section shall result in the manager being required to reimburse the Agency for the cost or expense resulting from the failure or refusal and may result in further administrative action.

(g) Repairs and replacements.

(1) Upon notification, the Agency shall be responsible for all necessary repairs of any of the state-owned fixtures, furnishings, and equipment located within the facility except for repairs necessitated by the negligence, abuse, or misuse of the fixtures, furnishings, or equipment by the manager or the manager's employees. Failure to comply with manufacturer's or BET's maintenance and preventive care requirements shall be considered negligence, abuse, or misuse. The cost of

repairs necessitated by negligence, abuse, or misuse by the manager or the manager's employees shall be the sole responsibility of the manager. Failure to make such repairs may result in administrative action under §854.81 of this title (relating to Administrative Action Based on Unsatisfactory Performance).

(2) The manager shall follow the instructions as established by BET to facilitate the timely necessary repairs and for the payment for such services. The instructions provide specific procedures for initiating repairs by the manager and a list of approved vendors for repairs. The instructions provided to each manager are published revised from time to time.

(3) Under no circumstances is a manager authorized to have the cost of repairs charged to the Agency or to have repairs made by anyone other than approved vendors unless Agency staff has given the manager authority to do so in writing. Each vendor included in the approved list of vendors for repairs shall be informed by Agency staff of this prohibition and of the procedures for authorized repairs [~~and for payment for services~~].

(4) Agency staff members on their own initiative or upon request shall determine the need for replacement of any fixtures, furnishings, or equipment, and they shall report it to the BET director. If the BET director authorizes the expense, the replacement fixtures, furnishings, and/or equipment shall be purchased, contingent upon availability of BET funds.

(5) Fixtures, furnishings, and equipment shall not include sanitation and cleaning supplies. Each manager of a facility shall be responsible for replacing all such items with items of a quality comparable to those being replaced and originally furnished by the Agency.

(h) Initial inventory of merchandise and expendables for newly licensed managers. The Agency shall furnish without charge the initial inventory of merchandise and expendables for the initial assignment of a newly licensed licensee. The initial inventory of merchandise and expendables shall be sufficient to assist the manager with starting the business.

(i) Subsequent inventory of merchandise, sanitation and cleaning supplies, and expendables.

(1) The manager shall maintain an inventory of merchandise, sanitation and cleaning supplies, and expendables in the same quantities as were transferred to the manager upon assignment to the facility. If the Agency determines that changed circumstances require different quantities of merchandise, sanitation and cleaning supplies, and expendables, the Agency shall communicate in writing to the manager the new quantities required. If the new quantities of merchandise, sanitation and cleaning supplies, and expendables are necessary to provide for the satisfactory operation of the facility, those new quantities of inventory must be maintained by the manager.

(2) Managers assigned to any facility other than their initial assignment in Texas shall acquire the merchandise, sanitation and cleaning supplies, and expendables as determined by the Agency to be sufficient to satisfactorily operate the facility. To effectively expedite the changeover in facilities, when a facility is already stocked with merchandise, sanitation and cleaning supplies, and expendables, the existing stock shall become part of the required inventory stock level of the incoming manager. The amount owed by the incoming manager for the existing stock shall be the amount agreed to by the affected parties. If the existing inventory is the property of the state, the amount owed by the incoming manager shall be the amount paid with state funds.

(j) Purchases on credit. During the first three years of being in the program, managers must notify the Agency in advance of any purchase on credit of merchandise, sanitation and cleaning supplies, and expendables.

(k) Obtaining an advance from the Agency for initial inventory. A manager may apply to the Agency for an advance to purchase an initial inventory of merchandise, sanitation and cleaning supplies, and expendables. The manager must satisfy an advance received from the Agency to purchase merchandise on subsequent assignments within a 12-month period and must make monthly payments in the amount established by the Agency. The granting of an advance is discretionary and may be done only under the following conditions:

(1) The manager shall justify to the Agency, in writing, the need for the advance and why the funds are not available from other sources.

(2) The manager shall submit evidence satisfactory to the Agency that the financing has been sought from at least two commercial financial institutions.

(3) The manager shall demonstrate to the Agency his or her ability to repay the advance within 12 months.

(4) Managers with outstanding balances on advances are not eligible for transfer to another assignment.

(l) Transfer of fixtures, furnishings, equipment, and inventory of merchandise, sanitation and cleaning supplies, and expendable items. When a manager is assigned to an existing BET facility, the responsibility for the fixtures, furnishings, and equipment of that facility, as well as its inventory of merchandise, sanitation and cleaning supplies, and expendable items shall be transferred to the incoming manager. The BET director shall follow the procedures for transferring the equipment between the incoming and outgoing managers to ensure that the managers have full knowledge of the nature and condition of the items being transferred.

§854.41. Set-Aside Fees.

(a) The Agency requires managers to pay a set-aside fee based on the monthly net proceeds of their BET facilities. The purposes of requiring this payment are:

(1) to promote to the greatest possible extent the concept of a manager being an independent business individual;

(2) to cause BET to be to the greatest extent possible, self-supporting;

(3) to encourage and stimulate growth in BET; and

(4) to provide incentives for the increased employment opportunities for blind individuals physically present in Texas [~~Texans~~].

(b) Use of funds. To the extent permitted or required by applicable laws, rules, and regulations, the funds collected as set-aside fees shall be used by the Agency for the following purposes:

(1) maintenance and replacement of equipment for use in BET;

(2) purchase of new equipment for use in BET;

(3) management services;

(4) ensuring a fair minimum return to managers; and

(5) the establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if it is so determined by a majority vote of licensed managers [~~assigned to a facility~~], after the Agency provides to each such manager information on all matters relevant to these proposed purposes.

(c) Method of computing net proceeds.

(1) Net proceeds are the amount remaining from the sale of merchandise of a BET facility, all vending machine income, and other income accruing to the manager from the facility after deducting the reasonable and necessary cost of such sale, but excluding set-aside charges required to be paid by the manager. The manager shall not remove any items from the inventory or other stock items of the facility unless the manager pays for those items at the actual cost.

(2) Costs of sales that may be deducted from net sales to calculate net proceeds in a reporting period shall be limited to:

(A) cost of merchandise sold;

(B) wages paid to employees;

(C) payroll taxes; and

(D) the following reasonable miscellaneous operating expenses that are directly related to the operation of the BET facility. Discretionary expenses, not to exceed 1.5 percent of the monthly net sales, or $150, whichever is greater. Expenses must be verifiable, invoiced, and directly related to the operation of the facility. Acceptable expenses include:

(i) rent and utilities authorized in the permit or contract;

(ii) business taxes, licenses, and permits;

(iii) telecommunication services;

(iv) liability, property damage, and fire insurance;

(v) worker's compensation insurance;

(vi) employee group hospitalization or health insurance;

(vii) employee retirement contributions (the plans must be IRS-approved and not for the manager);

(viii) janitorial services, supplies, and equipment;

(ix) bookkeeping and accounting services;

(x) trash removal and disposal services;

(xi) service contracts on file with the Agency;

(xii) legal fees directly related to the operation of the facility (legal fees directly or indirectly related to actions against governmental entities are not deductible);

(xiii) medical expenses directly related to accidents that occur to employees at the facility, not to exceed $500;

(xiv) purchase of personally owned or leased equipment that has been approved by the Agency for placement in the facility;

(xv) repairs and maintenance to personally owned or leased equipment that has been approved by the Agency to be placed in the facility;

(xvi) consumable office supplies;

(xvii) exterminator or pest control services; and

(xviii) mileage expenses for vehicles required for the direct operation of vending facilities at the rate and method allowed by the Internal Revenue Service at the time the expenses are incurred.

(3) All reports by managers shall be accompanied by supporting documents required by the Agency.

(d) Method of computing monthly set-aside fee. The monthly set-aside fee of each manager shall be a percentage of the net proceeds of the facility as determined in accordance with this section. The provisions relative to the percentage required to be paid as set-aside fees shall be reviewed by the BET director with the active participation of ECM at least annually each state fiscal year. The purpose of the review shall be to determine whether the percentage needs to be adjusted in order to meet the financial needs of the program. The percentage assessed against the net proceeds of facilities may be lowered or raised to meet the needs of the program. ECM shall be provided with all relevant financial and other information concerning the financial requirements of the program no fewer than 60 days before a review by the BET director in which the percentage is to be considered. For the period from the effective date of this amended rule until BET director undertakes his or her first annual review of the set-aside fee, the percentage shall be 5 percent.

(e) If ECM disagrees with the action taken to establish a new set-aside fee rate after the annual review, then ECM may choose to use the appeal process.

(f) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's monthly statement of facility operations. The manager shall use BET Monthly Facility Report, BE-117, to report monthly activities.

(g) Adjustments to monthly set-aside fee.

(1) To encourage managers to hire individuals with disabilities, managers shall deduct from their set-aside payment up to 50 percent of the wages or salary paid to an employee who is blind or who has another disability or disabilities (as defined by the Americans with Disabilities Act) during any month up to an amount not to exceed 5 percent of the set-aside payment amount for that month, or $250, whichever is less. A manager may make this deduction for any number of employees who are blind or have another disability as long as that deduction from the set-aside payment amount does not exceed 25 percent of the total set-aside payment that is due, or $1,250, whichever is less. The manager shall provide documentation to BET as required by the Agency to verify such employment and the right to the reduction in set-aside fees. For the purposes of this paragraph, "who is blind or who has another disability" does not include:

(A) the manager;

(B) an individual who is blind or who has another disability at the first degree of consanguinity or affinity to the manager; or

(C) an individual who is blind or who has another disability claimed as a dependent, either in whole or in part, on the manager's federal income tax return.

(2) Adjustments provided for in paragraph (1) of this subsection shall not apply for any month in which the set-aside fee is not paid in a timely manner.

(3) To encourage managers to file their monthly statement of facility operations and pay their monthly set-aside fee promptly, managers shall have their monthly set-aside fee increased by 5 percent of the total amount due if either their monthly statement or the monthly set-aside fee is not received in a timely manner, pursuant to these rules. None of the terms of this rule shall be construed to create a contract to pay interest, as consideration for the use, forbearance, or detention of money, at a rate more than the maximum rate permitted by applicable laws and rules. This adjustment to the set-aside fee is not imposed as interest.

§854.42. Duties and Responsibilities of Managers.

(a) Managers shall comply with applicable law, the rules contained in this chapter, written agreements with hosts, the BET assignment, the requirements of the BET manual, and instruction by BET staff.

(b) Managers shall comply with procedures prescribed by the Comptroller of Public Accounts for the payment of sales taxes and provide evidence to the Agency of timely sales tax remittances.

(c) Managers shall not engage in conduct that demonstrably jeopardizes the Agency's right, title, and interest in the BET facility, its equipment, or the lease or agreement with the property managers.

(d) While managing or present at their assigned BET facility, managers shall dress and act in an appropriate manner consistent with the environment in which they are operating, health and safety regulations, and anti-discrimination provisions under §854.11(h) of this title (relating to General Policies). [Managers shall maintain a professional appearance and act in a professional manner while managing a BET facility.]

(e) Managers shall open a commercial business account in which they maintain sufficient funds to operate the BET facility.

(f) Managers shall hire sufficient employees to ensure the efficient operation of the BET facility and to provide satisfactory service to customers. If the facility is remodeled or if operational areas change, the manager must have sufficient employees on hand for the necessary shutdown and reopen cleanup.

(g) Managers shall be actively engaged in the management of a BET facility and be actively working the number of hours necessary to achieve satisfactory operation of the facility. With prior notice from the Agency, managers shall be available for all necessary visits to the facilities for advice, consultation, and inspections of the facility. If the business is closed for remodel or improvement, the manager shall be available for the opening, closing, and overall security of the business and assets.

(h) Managers shall take appropriate actions to correct deficiencies noted on BET facility audits or reviews within seven business days.

(i) Managers shall provide satisfactory service to the BET facility host and customers.

(j) Managers shall notify the Agency in advance if they intend to be absent from their assigned facility for more than two days.

(k) Managers shall provide BET staff with the following information and shall notify BET staff of changes to any item no more than 10 business days after a change occurs:

(1) the BET facility telephone number;

(2) a mailing address and an e-mail address [to which BET correspondence is to be sent];

(3) a phone number for use in emergencies; and

(4) the manager's preferred accessibility format.

(l) Managers are accountable to the Agency for the proceeds of the business.

(m) Managers shall keep all records supporting the monthly facility report for three calendar years.

(n) Managers shall report the actual value of resale inventory by taking a physical count in the facility each month and submitting a written quarterly inventory (March, June, September, and December) with the monthly facility report.

(o) Managers, upon request by the Agency, shall make available all records pertinent to the facilities to which they have been assigned for audit or review. Any materials removed from the facility will be returned within 90 business days, unless evidence needs to be preserved. Copies of preserved evidence will be supplied by the Agency to the manager within 90 business days.

(p) Managers shall maintain liability insurance coverage sufficient to indemnify the Agency if Agency funding is not available or insufficient for such purposes.

§854.43. Responsibilities of the Texas Workforce Commission.

(a) Management services. The Agency shall provide each manager with regular and systematic management services, which shall, at a minimum, include:

(1) explanations of Agency rules, procedures, policies, and standards;

(2) recommendations on how the facility can be made more profitable for the manager;

(3) techniques to develop positive relationships with customers, assistants, and management of the host organization;

(4) possible solutions to problems recognized by the manager or brought to the manager's attention by Agency staff or the facility host;

(5) continuing education and training courses and opportunities for managers designed to enhance skills, productivity, and profitability; and

(6) information about laws, rules, and regulations affecting the operation of a BET facility.

(b) Training. The Agency shall assist ECM in conducting a special training seminar for all licensees each year to inform them of new BET developments and to provide instruction on new, relevant topics to enhance upward mobility.

(c) Facility operating conditions. The Agency shall establish the conditions for operation of a BET facility in accordance with this subchapter and any requirements of the host. The operating conditions shall include, among other things, pricing-ranges requirements, hours of operation, and menu items or product lines. The Agency may revise the operating conditions from time to time as market conditions warrant. The ECM will actively participate in the setting of price ranges charged in the facilities. The final authority and ultimate responsibility for determining the price ranges to be charged for products sold through BET facilities shall rest with the Agency.

(d) BET financial data. Upon request, the Agency shall provide licensees with access to BET financial data. Also upon request, Agency staff shall assist the licensee in interpreting the data.

(e) Inventory payment. When a manager leaves the manager's initial assignment, the Agency shall pay the manager or the manager's heirs the value of the usable stock and supplies above the amount provided to the manager upon initial assignment.

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SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS

40 TAC §854.60

The rule is proposed under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The proposed rule affects Texas Labor Code, particularly Chapter 355.

§854.60. BET Elected Committee of Managers' Duties and Responsibilities.

(a) Authority. The Elected Committee of Managers (ECM) is created and shall operate under 20 USC §107b(1) of Chapter 6A of Title 20, known as the Randolph-Sheppard Act.

(b) Relationship to the Agency. ECM shall be presumed as the sole representative of all licensees to the Agency in matters contained in the Randolph-Sheppard Act and implementing regulations requiring the active participation of the ECM. Active participation means an ongoing process of good-faith negotiations between ECM and the Agency in the development of BET policies and procedures before implementation. The Agency shall have the ultimate responsibility for the administration and operation of all aspects of BET and has final authority in decisions affecting BET.

(c) Relationship to licensees.

(1) It shall be the sole responsibility of the licensees who elect the members of ECM to ensure that the individuals elected represent all licensees.

(2) ECM shall, in addition to all other matters set forth in this subchapter or by law or regulation affecting the administration of BET, act as an advocate for licensees and shall strive to improve and expand BET and make it profitable and successful to the greatest extent possible for the mutual benefit of the Agency and of the legally blind individuals physically present in Texas [~~Texans~~] who participate in the program.

(d) BET policies, rules, and procedures. In all matters related to policies and rules, the Agency has the ultimate responsibility and the ultimate authority for their establishment and adoption. ECM shall actively participate in the consideration of significant BET decisions and in deliberations of rules and policies affecting BET. Whenever the Agency or ECM wishes to consider policies or rules related to BET, the Agency shall request that ECM participate in the Agency rule-drafting workshops to be conducted by the BET director. The BET director will work with ECM in a good-faith effort to agree in matters related to rule and policy changes.

(e) BET administrative decisions. In matters concerning the administration of BET, the Agency holds the ultimate responsibility and authority for making administrative decisions affecting BET. The BET director shall establish and maintain a continuing dialogue and exchange of information with ECM about decisions regarding the administration of BET and shall seek ECM input and advice on all significant decisions affecting the administration of the program. In cooperation with the ECM chair and other members of ECM that the ECM chair considers necessary and appropriate, the BET director shall develop and implement methods of establishing and maintaining the dialogue and exchange of information. The methods developed shall be set out in detail in a written format and shall be included in the BET manual.

(f) Exclusions from participation. ECM, its members, and BET managers are not employees, officers, or officials of the State of Texas. Therefore, ECM shall not participate in any decision-making process regarding Agency personnel, personnel policies, or personnel administration.

(g) Structure. ECM shall, to the extent possible, be composed of licensees who are representative of all licensees in BET based on such factors as geography and facility type and size. Two representatives shall be elected from each designated ECM region created by the Agency with the active participation of ECM and as regions may be revised or modified.

(h) Qualifications. ECM shall establish qualifications for candidates as well as the procedures for voting, tabulating, and announcing results. The Agency shall provide such advice and counsel as may be requested by ECM to accomplish all elections of representatives to ECM.

(i) Term of office. The term of office for ECM members shall be two years, beginning on January 1 following the election. Even- and odd-numbered districts shall alternate election years. Any ECM member elected to fill a vacancy shall serve the remainder of the unexpired term of the manager who vacated a position.

(j) Meetings. ECM shall meet once during each calendar year to elect officers and additionally as it may establish by bylaw. The ECM chair shall provide a written meeting agenda to the BET director 10 business days before each meeting.

(k) Internal procedures of ECM. ECM shall establish bylaws to govern its internal operation and order of business and shall provide the Agency with a copy.

(l) Travel expenses.

(1) Expenses for travel, meals, lodging, or other related expenses incurred by ECM representatives must be preapproved by the Agency.

(2) When representing a manager at a full evidentiary hearing, the ECM representative shall be reimbursed for travel, meals, and lodging at the rate allowed for travel by Agency staff members.

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SUBCHAPTER E. ACTION AGAINST A LICENSE

40 TAC §§854.80 - 854.83

The rules are proposed under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The proposed rules affect Texas Labor Code, particularly Chapter 355.

§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance.

(a) Causes for termination. The license of a licensee shall be terminated upon the occurrence of any one of the following:

(1) The licensee's visual acuity is improved by any means to the point at which the licensee no longer satisfies the definition of legally blind.

(2) The licensee becomes otherwise permanently disabled and as a result of such permanent disability is unable to perform the essential functions of operating and maintaining a BET facility with or without reasonable accommodations. Being permanently disabled is having a condition that is medically documented and has existed or is expected to exist for at least 12 months. The determination of permanently disabled shall be made by the VRD director or designee after review of medical documentation and other information relevant to the issue. Other information relevant to the issue shall include recommendations from Agency staff and ECM, pertinent information from the licensee's BET file or provided by the licensee, and reports of examinations or evaluations, if any, obtained by the Agency and the licensee.

(3) The licensee is unassigned and has not accepted assignment offers or applied for an assignment when facilities are available for a period of six consecutive months. The six-month deadline may be extended by periods of 30 days when facilities are not available for assignment. Any unassigned period of 12 months or more requires retraining for the licensee to become eligible to bid for, or be assigned to, available facilities.

(b) Examination and evaluation. In any situation in which the vision or other disability of a licensee is at issue with respect to termination of a license, the Agency or the licensee may require an examination or evaluation by professionals to determine whether the licensee is otherwise permanently disabled and because of the permanent disability is unable to perform the essential functions of operating and maintaining a BET facility. The reports of such professionals shall be furnished to the Agency and the licensee. Any failure of the licensee to participate in required examinations or evaluations shall be grounds for administrative action.

(c) Restoration of license. A license terminated under the provisions of this section may be restored at the discretion of the Agency if the condition or conditions causing the termination were resolved satisfactorily. In considering a decision with respect to whether to restore a license that was terminated according to this section, the VRD director shall consult with appropriate BET staff members, the ECM chair, and any advocate for the licensee and shall consider all pertinent information and documentation provided by any of the individuals described in this subsection.

(d) Conditional restoration. If the VRD director determines that a license that was terminated according to this section should be restored, the VRD director may authorize the restoration of the license on any reasonable basis, such as participation in continued medical treatment or therapy, or completion of refresher or other courses of training.

§854.81. Administrative Action Based on Unsatisfactory Performance.

(a) Causes for administrative action based on unsatisfactory performance. One or more of the following acts or omissions by a manager shall subject a manager to administrative action for unsatisfactory performance:

(1) Failing to operate the assigned facility as set forth in the permit or contract with the host and/or in the manager's record of assignment unless prior written approval to operate the facility in another manner has been obtained from the Agency.

(2) Failing to pay money that is due from the operation of the facility, including, but not limited to, taxes, fees, advances, or assessments to a governmental entity or supplier, or knowingly giving false or deceptive information to or failing to disclose required information to or misleading in any manner a governmental entity, including the Agency, or a supplier.

(3) Failing to file required financial and other records with the Agency or preserve them for the time required by this subchapter.

(4) Failing to cooperate [~~in a timely manner~~] with audits conducted by the Agency or other state or federal agencies.

(5) Failing to comply [~~be in compliance~~] with filing and reporting requirements established under state and federal tax laws relating to the operation of the facility[~~, as demonstrated by a tax lien~~].

(6) Failing to maintain insurance coverage required by these rules.

(7) Using BET equipment or facility premises to operate another business.

(8) Failing to properly maintain facility equipment in a clean and operable condition within the scope of the manager's level of maintenance authorization.

(9) Intentionally abusing, neglecting, using, or removing facility equipment without prior written Agency authorization.

(10) Operating a facility under the influence of substances that interfere with the operation of the facility, including alcohol and illegal or prescription drugs.

(11) Operating a BET facility in a manner that demonstrably jeopardizes the Agency's investment in the facility.

(12) Using privileged information about an existing facility to compete with the Agency for the facility.

(13) Failing to comply with any federal or state law prohibiting violation of human rights or discrimination and failure to ensure that services are provided without distinction on the basis of race, gender, color, national origin, religion, age, political affiliation, creed, or disability.

(14) Failing to maintain the necessary skills and abilities for effectively managing a facility.

(15) Using a facility to conduct unlawful activities.

(16) Failing to comply with the manager's responsibilities under applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency staff.

(17) Communicating or causing another individual to communicate with a member of a selection panel or an applicant for a facility then being considered for assignment for the purpose of influencing or manipulating the selection of an applicant by offering to give a thing or act of value, including promises of future benefit, or by threat.

(18) Failing to complete annual continuing education requirements.

[~~(b) Administrative action pending an appeal. The Agency may at its discretion suspend administrative action pending the outcome of an appeal.~~]

(b) [~~(c)~~] Types of administrative actions. The five types of administrative actions that are based on unsatisfactory performance are as follows:

(1) Written reprimand. Written reprimand is a formal statement describing violations of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency staff.

(2) Probation. Probation is allowing a licensee to continue in BET to satisfactorily remedy a condition that is not acceptable under this subchapter. If the condition causing probation is satisfactorily remedied within the time periods specified in the written notice of probation, the probation will be lifted. If the unacceptable condition is not remedied within the time specified, additional and more serious administrative actions may ensue. When a licensee who has been on probation two times in a three-year period qualifies for probation for the third time within those three years, the licensee's license may be revoked according to Agency rules.

(3) Loss of facility. Loss of facility is the removal of a manager from the manager's current facility for administrative reasons when the manager's actions or inactions endanger the Agency's investment in the facility.

(4) Termination. Termination is the revocation of a license and the removal of the licensee from BET.

(5) Emergency removal of manager.

(A) A manager may be summarily removed from a facility in an emergency. An emergency shall be considered to exist when the Agency, in consultation with the ECM chair, determines that some act or acts or some failure to act of that manager or any individual who is an employee, server, or agent of such manager, will, if such removal does not occur:

(i) result in a clear danger to the health, safety, or welfare of any individual or to the property of any individual in or around the facility; or

(ii) result in a deterioration of the existing or future relationship with the host, thereby putting the continuation of the facility in jeopardy; or

(iii) present a clear potential of substantial loss or damage to the property of the State of Texas.

(B) In any case in which a manager has been summarily removed from a facility on an emergency basis for any of the reasons set forth in subparagraph (A) of this paragraph, the manager shall be entitled to have a hearing about the necessity of the removal within 10 days after the removal has occurred.

(C) The time period for the hearing may be extended only by mutual agreement of the manager and the Agency under the following circumstances: if an official holiday of the State of Texas falls within the period, then the period shall be extended by the time of the holiday; or, if the services of an arbitrator cannot be obtained in time to hold the hearing within the period, then the period shall be extended by the time necessary to obtain the services of an arbitrator and schedule the hearing.

(D) If the manager desires to have a hearing, the manager shall notify the Agency in writing via mail or electronically via email within 48 hours following the removal. The written notification need state only the name of the manager, the location of the facility, and that the manager desires to have a hearing about the need for summary removal. The request may be delivered to the BET director, the VRD director, or any local BET staff member in the geographic region in which the facility is located.

(E) Upon receipt of any such request, the BET director shall obtain the services of an arbitrator from the American Arbitration Association (AAA) or other similar organization to conduct the hearing.

(F) The manager shall be notified of the date, time, and place of the hearing. To the extent possible, the hearing shall be conducted in an area near the location of the facility.

(G) The hearing shall be conducted in accordance with the rules of AAA, except that the arbitrator shall be requested to announce orally a decision at the conclusion of the hearing.

(H) If the arbitrator determines that no emergency necessitating the removal of the manager exists, then the manager shall be immediately restored to the operation of the facility.

(I) No determination made as a result of the hearing shall operate to prejudice the rights of the manager to proceed with a grievance in accordance with the terms of this subchapter and the Act.

(c) [~~(d)~~] Administrative procedures.

(1) The Agency shall decide what administrative action to take based on the seriousness of the violation, the damage to BET facilities and/or equipment, and the licensee's record.

(2) Upon receipt of information that indicates that administrative action may be appropriate, the Agency shall take the following actions before deciding whether to take administrative action:

(A) The Agency shall notify the licensee in writing via mail or electronically via email of the allegations and reasons that administrative action is being considered. The notice shall either be hand-delivered and read to the licensee, or be delivered to the licensee's work, e-mail address, or home address.

(B) The licensee shall have five business days to respond to the notice, either in person or in writing. The response shall be made to the individual designated in the notice. After receiving the licensee's response, the Agency shall decide what administrative action, if any, is appropriate. If no response is received from the licensee in a timely manner, the Agency shall decide without the licensee's response what administrative action, if any, will be taken.

(C) If a decision is made to issue a written reprimand, the written reprimand will be accompanied by a summary of the evidence justifying the reprimand, suggested steps for correcting the violation, and the consequences of not correcting the violation. All reprimands shall contain notice of the licensee's right to appeal the reprimand and a statement that failure to correct the violation may result in further administrative action.

(D) If a decision is made to place a licensee on probation, the Agency shall deliver to the licensee a letter of probation containing the following:

(i) the specific reasons for probation;

(ii) the remedial action required to remove the licensee from probation;

(iii) the time within which the remedial action must take place;

(iv) the consequences of failure to take remedial action within the prescribed time frame; and

(v) notice of the licensee's right to appeal.

(E) Upon satisfactory completion of the remedial action outlined in the letter of probation, a licensee shall be removed from probation.

(F) Failure of the licensee to complete remedial requirements within the prescribed time frame shall result in one or more of the following actions:

(i) required training;

(ii) extension of probation;

(iii) restrictions on applying for another facility;

(iv) removal from the facility; or

(v) termination of license.

(G) If, after the manager has had an opportunity to respond, a decision is made that sufficient grounds exist to remove the manager from a facility, the Agency shall notify the manager in writing by hand delivery or certified mail with a return receipt requested that the manager's assignment to the BET facility has been terminated and the manager must vacate the facility. The removal letter shall contain the following information:

(i) specific reasons for removal from the facility;

(ii) actions required by the manager, if any;

(iii) requirements for obtaining reassignment; and

(iv) notice of the manager's right to appeal under the Act.

(H) If, after the manager has had an opportunity to respond, a decision is made that sufficient grounds exist for termination, the Agency shall notify the manager in writing by hand delivery, e-mail, or certified mail with a return receipt requested that the Agency has decided that sufficient cause exists to terminate the manager's license and the manager must vacate the facility. The termination letter shall contain:

(i) specific reasons for termination;

(ii) actions required by the licensee, if any;

(iii) procedures for applying for any other Agency services for which the individual may be eligible; and

(iv) notice of the licensee's rights under the Randolph-Sheppard Act.

(3) The provisions of paragraph (2) of this subsection notwithstanding, pending a determination with respect to administrative action, a manager may be removed from a facility if the Agency considers such removal to be in the best interest of BET and if efforts to correct the deficiencies have been unsuccessful.

(4) During the license termination process, the manager shall not be eligible for assignment to any other BET facility.

(d) [~~(e)~~] Before termination of a license, the Agency shall afford the licensee an opportunity for a full evidentiary hearing as described in §854.82(e) of this title (relating to Procedures for Resolution of Manager's Dissatisfaction).

§854.82. Procedures for Resolution of Manager's Dissatisfaction.

(a) Appealable actions. This section provides the procedures for licensees who are dissatisfied with the Agency's action arising from the operation of BET.

(b) Actions not subject to appeal. The phrase "the Agency's action arising from the operation of BET" in subsection (a) of this section does not include the Agency's hiring, firing, or discipline of Agency employees. [~~following actions of the Agency:~~]

[~~(1) the hiring, firing, or discipline of Agency employees;~~]

[~~(2) the challenge of federal or state law, or rules previously approved by the Secretary of Education under the Act; or~~]

[~~(3) an action by the Agency unless it is alleged that the action is in violation of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel, or is unreasonable. "Unreasonable" shall mean "without rational basis or arbitrary and capricious."~~]

[~~(c) Agency discretion and sovereign immunity. The Agency does not waive its right and duty to exercise its lawful and proper discretion. The Agency does not waive its sovereign immunity.~~]

(c) [~~(d)~~] Remedies. Remedies available to resolve dissatisfaction shall correct the action complained of from the earlier time of:

(1) agreement by the parties about an appropriate remedy;[~~,~~] or

(2) a final resolution under the Randolph-Sheppard Act that the Agency acted in violation of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel, or acted unreasonably.

(d) [~~(e)~~] Informal procedures to review dissatisfactions. At the request of a licensee, the Agency shall arrange for and participate in informal meetings to quickly resolve [~~quickly~~] a matter of dissatisfaction arising from the operation or administration of BET. The informal process is for resolving an issue in controversy quickly and amicably. It is not for the purpose of denying or delaying the manager's right to pursue resolution of a matter through a full evidentiary hearing. At any point during the informal process, either party may elect to terminate the following informal process procedures:

(1) A licensee may initiate informal procedures by notifying the Agency in writing, via mail or electronically via email, through the BET director that the licensee is dissatisfied with a matter arising from the operation or administration of BET. The written notice must describe with reasonable particularity the specific matter in controversy, the date the action occurred, or an approximate date if the exact date is not known, and the licensee's desired relief or remedy. If the licensee is dissatisfied with a series of the same or related actions over a period, the notice shall describe, to the best of the licensee's ability, the time frame of the events and include the date of the most recent event about which the licensee is dissatisfied.

(2) To ensure that informal resolution is possible in a timely manner, the licensee's request to initiate informal proceedings must be filed with the Agency no later than 20 business days after the most recent event specified in the request. the Agency shall, within a reasonable time, arrange a meeting at a location, date, and time satisfactory to all parties.

(3) The licensee must notify the Agency when filing a request for informal proceedings if the licensee is an attorney or will be represented by legal counsel during mediation. The Agency may [~~will~~] be represented by legal counsel only when the licensee is an attorney or is represented by legal counsel.

(4) Meetings shall take place in an informal environment and shall be attended by the licensee, a BET staff member with decision-making authority, and a neutral third party who shall serve as an informal mediator during the discussions.

(5) The neutral third party shall be an individual certified in conducting mediations.

(6) The neutral third party's responsibility is to report to the Agency only that the effort to resolve the matter to the licensee's satisfaction was or was not successful. If an agreement is reached, then the actions agreed to with respect to the facility or licensee shall, prior to the conclusion of the mediation, be reduced to writing and signed by the licensee and the BET attendee. The parties shall expeditiously complete all actions called for in the signed agreement [be immediately taken].

(7) The provisions concerning mediation under Chapter 850 of this title (relating to Vocational Rehabilitation Services Administrative Rules and Procedures) shall not apply to or control the informal resolution procedures in this subchapter.

(e) [(f)] Full evidentiary hearing. A manager has the right to request a full evidentiary hearing to resolve dissatisfaction according to the following:

(1) A manager has the right to request a full evidentiary hearing without first going through mediated meetings described in subsection (d) [(e)] of this section.

(2) A request for an evidentiary hearing must be made no later than the 20th business day after the occurrence of the Agency action about which the manager complains. The VRD director, upon request of the complaining party, may extend the period for filing a grievance upon the showing of good cause by the complaining party for such additional period if such request is made no later than the 20th business day after the occurrence of the Agency action about which the manager complains.

(3) A manager requesting a full evidentiary hearing after the conduct of mediated meetings described in subsection (d) [(e)] of this section must request such hearing in writing no later than the 20th business day after the date on which the neutral third party in subsection (d) of this section reports an unsuccessful informal mediation or a party terminates the informal mediation process, whichever is earlier in time [receipt of the VRD director's decision].

(4) A request for a full evidentiary hearing must be in writing and transmitted to the VRD director by mail or by email. A request that is postmarked within the designated time frame shall be considered delivered in a timely manner if properly posted.

(5) The request for a full evidentiary hearing must describe the specific action with reasonable particularity sufficient to provide notice as to the action that is alleged to be unreasonable or in violation of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel. The request must, to the best of the complainant's knowledge, contain the date the action occurred, and the law or regulation must be reasonably identified if an action is alleged to be in violation of law, this subchapter, the requirements of the BET manual, or regulation. The request must also identify the desired relief or remedy.

(6) The manager may be represented in the evidentiary hearing by legal counsel or other representative of the manager's choice, at the manager's expense.

(7) The Agency shall arrange reader or other communication services for the manager, if needed, upon request by the manager at least three business days prior to the hearing date.

(8) The manager shall be notified in writing of the time and place fixed for the hearing and of the manager's right to be represented by legal or other counsel.

(9) Selection of the hearing officer.

(A) The hearings coordinator, the Agency's Office of General Counsel, shall select, on a random basis, a hearing officer from a pool of individuals qualified according to this section.

(B) The hearing officer shall be an impartial and qualified individual who:

(i) is not involved either with the Agency's action that is at issue or with the administration or operation of BET;

(ii) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(iii) has knowledge of the Randolph-Sheppard Act and any applicable state and federal regulations governing the appeal;

(iv) has received training specified by the Agency with respect to the performance of official duties; and

(v) has no personal, professional, or financial interest that would compromise his or her impartiality.

(C) An individual is not considered to be an employee of a public agency for the purposes of subparagraph (B)(ii) of this paragraph if the only consideration is that the individual is paid by the agency to serve as a hearing officer.

(10) Hearings shall be conducted in accordance with the Randolph-Sheppard Act, Texas Government Code, §2001.051 et seq., and this subchapter to the extent that those procedures do not conflict with the Act and its implementing regulations or this subchapter.

(11) Licensees bringing complaints shall have the burden of proving their cases by means of a preponderance of the evidence. Licensees shall present their evidence first. When a hearing is requested because of administrative action by the Agency against a licensee, The Agency shall have the burden of proving its case by a preponderance of the evidence and shall present its evidence first.

(12) Transcription of Proceedings.

(A) Unless precluded by law, the hearing shall be recorded electronically either by the hearing officer or by someone designated by the hearing officer. Such recording shall be the official record of the testimony recorded during the hearing. Any party, however, may request, at the party's expense, that the hearing be recorded by a court reporter if the request is made within 10 days of the date for the hearing.

(B) In lieu either of a recording of the testimony electronically or of the reporting of testimony by a court reporter, the parties to a hearing may agree upon a statement of the evidence to use transcription as a statement of the testimonial evidence, or agree to the summarization of testimony before the hearing officer, provided, however, that proceedings or any part of them must be transcribed on written request of any party.

(C) Unless otherwise provided in this subchapter, the party requesting a transcription of any electronic recording of the proceedings shall bear the cost for transcribing the testimony. Nothing provided for in this section limits the Agency to an electronic record of the proceedings.

(D) The record of the proceedings, including exhibits and any transcription, shall be made available to the parties by the Agency no later than the 30th business day after the close of the hearing.

(13) The hearing officer shall issue a recommendation that shall set forth the principal issues and relevant facts that were stated at the hearing and the applicable provisions of law, rule, the requirements

of the BET manual, or any instruction by Agency personnel. The recommendation shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and bases for the conclusions.

(14) In formulating a recommendation, the hearing officer shall not evaluate whether the Agency's actions were wise, efficient, or effective. Rather, the hearing officer is limited to determining whether the Agency's actions were unreasonable, or if they violated applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel.

(15) If the hearing officer finds that the actions taken by the Agency were unreasonable or violated applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel, the hearing officer shall also recommend any prospective action necessary to correct the violations.

(16) The hearing officer's recommendation shall be made no later than the 30th business day after the receipt of the official transcript. The recommendation shall be delivered promptly to the VRD director.

(17) The VRD director shall review the recommendation of the hearing officer and forward a decision to the manager no later than the 20th business day after receipt of the hearing officer's recommendation. The VRD director's decision shall include findings of fact and conclusions of law based on the evidence in the record and separately stated.

(18) Subject to the provisions of Texas Government Code, §2001.144 and §2001.146, the VRD director's decision shall be the final decision of the Agency. Any such decision becomes the final decision of the Agency if a timely motion for rehearing or reconsideration is not filed.

(f) [(g)] Arbitration. A manager appealing the Agency's decision must file a complaint with the US Secretary of Education in conformity with the provisions of the implementing regulations at 34 CFR §395.13 of the Act, pertaining to arbitration of vendor complaints.

§854.83. Establishing and Closing Facilities.

(a) Establishing facilities. On its own initiative, at the request of an agency that controls federal or state property, of the ECM, or of a private organization, the Agency shall survey the property, blueprints, or other available information concerning the property to determine whether the installation of a BET facility is feasible and consonant with applicable laws and regulations and with VRD objectives. If the installation of a BET facility is determined to be feasible, the Agency shall proceed to develop plans for the establishment of a facility in accordance with procedures promulgated and implemented by Agency staff and, when the facility is developed, shall assign a manager to the facility.

[(1) If the installation of a BET facility is determined to be feasible, the Agency shall proceed to develop plans for the establishment of a facility in accordance with procedures promulgated and implemented by Agency staff and, when the facility is developed, shall assign a manager to the facility.]

[(2) If it is determined that a blind individual could not properly operate a vending facility at a particular location, the pertinent facility data will be presented to the VRD director to determine whether an individual whose disability is not of a visual nature could operate the facility in a proper manner. The phrase "could not properly operate a vending facility" includes the existence, at the time of the establishment of the facility, of laws or regulations that restrict the blind from operating a particular vending facility as defined under state and federal laws.]

(b) Closing facilities. Except for temporary closings by Agency staff, no BET facility shall be closed by the Agency until both of the following have occurred:

(1) The BET director has certified to the VRD director that the facility is no longer a feasible or viable BET facility and provides reasons for that opinion.

(2) The VRD director has approved the proposed closing of the facility.

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

Filed with the Office of the Secretary of State on March 22, 2022.

TRD-202200985

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: May 8, 2022

For further information, please call: (512) 689-9855

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 6. RURAL HEALTH CLINICS

1 TAC §355.8101

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8101 concerning Rural Health Clinics Reimbursement. The amendment to §355.8101 is adopted without changes to the proposed text as published in the January 14, 2022, issue of the *Texas Register* (47 TexReg 78). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §355.8101 is adopted to comply with House Bill 4 (H.B. 4), 87th Legislature, Regular Session 2021, and to make other amendments to enhance clarity, consistency, and specificity. HHSC is required by H.B. 4 to ensure a Rural Health Clinic (RHC) is reimbursed for a covered telemedicine or telehealth medical service delivered by a health care provider to a Medicaid recipient at a RHC facility.

The adopted rule includes reformatted text for clarity and transparency in subsection (h) and subsection (l) with form updates in subsection (j). Additional clarifying updates are made to ensure consistency throughout the rule and that the rule appropriately describes current practices.

COMMENTS

The 21-day comment period ended February 4, 2022.

During this period, HHSC received comments regarding the amendment from two commenters from two entities: DeWitt Medical District and the Texas Association of Rural Health Clinics. A summary of comments relating to the rule and HHSC's responses follow.

Comment: All commenters expressed support for the proposed rule amendment.

Response: HHSC appreciates the commenters' support of the rule amendment. No changes were necessary in response to this comment.

STATUTORY AUTHORITY

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 23, 2022.

TRD-202201020

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 12, 2022

Proposal publication date: January 14, 2022

For further information, please call: (512) 707-6065

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 39. PORT OF ENTRY

16 TAC §§39.1 - 39.5

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended §39.1 and new §§39.2 - 39.5, related to Ports of Entry, without changes to the proposed text as published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 622). The rules will not be republished.

The commission adopts these rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. As amended, §39.1 brings the rule in line with modern agency protocols for providing receipts for taxes and fees collected at ports of entry. The adopted new §§39.2 - 39.5 reflect current statutory requirements and agency practices, providing increased transparency.

No public comments were received.

The rules are adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may 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.

Filed with the Office of the Secretary of State on March 23, 2022.

TRD-202200999
Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Effective date: April 12, 2022
Proposal publication date: February 11, 2022
For further information, please call: (512) 206-3451

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.276

The Comptroller of Public Accounts adopts new §3.276, concerning surveying services, with changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6377). The rule will be republished. This section memorializes existing comptroller policy, implements House Bill 3319, 80th Legislature, 2007, and defines terms in Tax Code, §151.0048 (Real Property Service) which were not previously defined. The comptroller intends for the information in this rule to be consistent with the surveying services information currently in §3.356 (relating to Real Property Service). Portions of §3.356 regarding surveying services will be repealed after the adoption of this new rule. To the extent the information in this section differs from the information concerning surveying services contained in other sections of this title, it is the comptroller's intent that this section control.

Subsection (a) defines terms used in this section. Paragraph (1) defines the term "confirm" based on guidance provided in Comptroller's Decision No. 101,058 (2011) and the requirements for boundary construction stated in Administrative Code, Title 22, Part 29, Chapter 663, Subchapter B, §663.16 (relating to Boundary Construction).

Paragraph (2) defines the term "contractor" as stated in Tax Code, §151.0048(c).

The comptroller received comments from Henry A. Kuehlem, Registered Professional Land Surveyor (RPLS), BaseLine Surveyors on the definition of "contractor." Mr. Kuehlem stated that "owner" should be added to the definition of "contractor" in subsection (a)(2) because survey work is ordered and paid for by the owner, especially in new home construction.

The comptroller declines to make the suggested change. Tax Code, §151.0048(c) provides the list of persons who may be regarded as a contractor. The comptroller recognizes there may be situations where a homeowner may act as a general contractor when building his or her own home. However, the statute's definition captures this possibility allowing for a "person acting as a builder to improve residential real property" to qualify for the exclusion.

Paragraph (3) defines the term "determine" based on guidance provided in Comptroller's Decision No. 101,058 (2011) and the requirements for boundary construction stated in Administrative Code, Title 22, Part 29, Chapter 663, Subchapter B, §663.16 (relating to Boundary Construction).

Paragraph (4) defines the term "landman." The definition is taken from Occupations Code, §1702.324(a) (Certain Occupations).

The comptroller received comments on this definition from Russell B. Cohen, Director of Government Affairs, American Association of Professional Landmen. Mr. Cohen proposed a revised definition of "landman" recently approved by the association's membership. Mr. Cohen suggested the comptroller use this definition of a landman instead of the definition in subsection (a)(4) of the proposed rule. The comptroller declines to adopt the suggested definition. For ease and consistency of administration, the comptroller adopts the definition of landman in Occupations Code, §1702.324(a). This section of the Occupations Code aligns more closely with the qualifications for exclusion described in Tax Code §151.0048(b-1).

Paragraph (5) defines the term "surveying service" based on the definition of "surveying of real property" in §3.356(a)(9) of this title (relating to Real Property Service).

Subsection (b) restates agency policy that a person who performs a surveying service defined in subsection (a)(5) performs a taxable surveying service and lists some examples. The examples are for illustration purposes only and are not exhaustive.

Subsection (c) lists examples of surveying activities that are not taxable as real property services. Prior comptroller rulings have held that the surveying and marking of proposed improvements and natural features are not taxable as real property services. *See* e.g., Comptroller Decision No. 101,058 (2011); STAR Accession Nos. 9207L1186C04 (July 30, 1992); 9004L0996E11 (April 4, 1990); and 8901T0920C10 (Jan. 23, 1989). Although these activities could be considered "surveying" within the meaning of the statute, subsection (c) memorializes the prior comptroller rulings.

The comptroller received comments from Henry Mayo, RPLS, Regional Vice President, BaseLine Surveyors. Mr. Mayo suggested the addition of a definition for the term "record data" in subsection (a). His proposed definition for the term would be "existing boundary or easement information obtained from recorded public documents." Mr. Mayo also suggested including that the provision of record data included in a topographic survey or other nontaxable survey without applying a professional determination of the individual line locations as an example of a nontaxable service in subsection (c). Finally, Mr. Mayo suggested a requirement that a disclaimer be included on nontaxable surveys when only record data was used to prepare the survey.

The comptroller declines to make the suggested changes. The proposed definition of "record data" does not provide additional, substantive guidance, and Mr. Mayo's suggested term would only be used within his suggested addition to subsection (c). The suggested addition to subsection (c) describes activities performed within the services currently listed and does not provide an additional example of a specific service. An additional disclaimer is also not required. Taxpayers are required to maintain records to document their taxable and nontaxable sales by §3.281 (Records Required; Information Required).

Curtis Strong, RPLS, Strong Surveying, LLC., asked whether preparing an elevation certificate for flood insurance purposes under subsection (c)(12) is taxable. The comptroller declines to make any changes based on this comment. Subsection (c)(12) clearly provides that a survey to certify building elevations issued for completion of the National Flood Insurance Program Elevation Certificate is nontaxable. However, if the certificate issued is used to evaluate risks to property, determine an individual's eligibility for insurance coverage, determine the proper insurance premium rate, or determine the payment of insurance policy benefits, the survey is taxable as an insurance service.

Both proposed subsections (b) and (c) include staking and placement services in the list of examples as taxable and nontaxable services. The comptroller received comments on staking and placement services in subsections (b)(8) and (c)(14) from Brad Litteken, RPLS; Dean Woodley, RPLS, Live Oak Surveying; Mr. Kuehlem, RPLS; and Mr. Mayo, RPLS.

Mr. Litteken noted subsections (b)(8) and (c)(14) have the same title, "Staking and Placement Services." He said the duplicate titles would make it difficult to code his accounting software to distinguish the taxable and nontaxable services listed in those subsections. Mr. Woodley echoed Mr. Litteken's statement that the inclusion of staking services in both sections will create confusion.

Mr. Woodley also stated that licensed professional surveyors would be at a disadvantage because unlicensed persons also perform staking and placement services and do not consider themselves to be performing a taxable service. Mr. Kuehlem also questioned whether the services described in the rule are taxable when performed by an unlicensed person.

Mr. Mayo suggested that the cleanest way to define the line between taxable and nontaxable location and staking surveying services is whether the determination of property and/or easement lines is made by a surveyor and certified by a seal and/or statement of certification.

Based on the comments, the comptroller renames subsection (c)(14) as location services. Those services are described as staking, painting, or otherwise marking the approximate future or existing surface positions of tangible personal property or improvements to realty when the service provider takes no actions listed in (a)(5) to determine or confirm the precise property or easement boundaries or the exact location of the item in relation to the boundaries. The comptroller declines to make any other changes based on these comments at this time.

Subsection (d) implements Tax Code, §151.0048(b) and (b-1), which exclude surveying services from taxable real property services when purchased by a contractor building a new residential improvement or when performed by a landman.

Doug Duffie, CPA requested latitude regarding the beginning and ending dates for the new residential construction exclusion provided in subsection (d)(1). Subsequently, Mr. Duffie wrote again stating, "it appears latitude has been granted for the new residential construction exclusion period for surveying services." The comptroller declines to make any changes based on these comments.

Subsection (e) explains the sales tax permitting and reporting responsibilities of a person who performs a surveying service.

Mr. Litteken commented, relating to subsection (d)(2) and (e)(3), that authorizing landmen to perform surveying services is in direct conflict with Occupations Code. He suggested to remove the word "surveying" from subsection (d)(2) and (e)(3) and all other related sections of the rule. The comptroller declines to make changes based on these comments. Subsections (d)(2) and (e)(3) are consistent with Tax Code, §§151.0048(b) and (b-1).

Subsection (f) restates agency policy regarding when a taxpayer may issue a resale or exemption certificate in lieu of paying tax on a taxable surveying service or for tangible personal property used in performing a taxable surveying service. This information is currently found in §3.356(c) and (d) of this title and §3.287 of this title (relating to Exemption Certificates).

Mr. Litteken also asked if local governmental entities should be specifically excluded and codified in this rule as exempt from sales tax. Additionally, Mr. Strong, requested a clarification that boundary work performed directly for a governmental entity is not taxable. Tax Code, §151.309 exempts all purchases of taxable items made by any political subdivision of this state, including all city, county, and special purpose districts. Additionally, subsection (f) details a surveyor's responsibilities when working for an entity that is providing services to an exempt entity. The comptroller declines to make any changes to the rule.

Subsection (g) restates agency policy regarding the taxability of an unrelated service. This information is found in §3.356(i) of this title.

Subsection (h) refers to §3.334 of this title for guidance relating to local sales and use taxes.

This section is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The adoption implements Tax Code, §151.0101 (Taxable Services) and §151.0048 (Real Property Services).

§3.276. Surveying Services.

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

(1) Confirm--To perform any act, at a location or remotely, to reestablish or verify boundaries of real property or the location of a real property improvement. The term includes reestablishing or verifying the location of a boundary used as a reference point to locate or measure to another point, such as the location of an improvement in relation to the boundaries of real property.

(2) Contractor--A person who makes an improvement on real property and who, as a necessary or incidental part of the service, incorporates tangible personal property into the real property improved. For the purposes of this section, the term includes a builder, developer, speculative builder, or other person acting as a builder to improve residential real property.

(3) Determine--To perform any act, at a location or remotely, to establish, mark, or set the boundaries of real property or the location of an improvement. The term includes ascertaining the location of a boundary used as a reference point to locate or to measure another point, such as the location of an improvement in relation to the boundaries of real property.

(4) Landman--An individual who, in the course and scope of the individual's business:

(A) acquires or manages petroleum or mineral interests; or

(B) performs title or contract functions related to the exploration, exploitation, or disposition of petroleum or mineral interests.

(5) Surveying service--An activity performed on land, from the air, under water or remotely that uses relevant elements of law, research, measurement, analysis, computation, mapping, and land description to determine or confirm the boundaries of real property or to determine or confirm the location of an improvement in relation to the boundaries of real property. Professional surveying subject to regulation under Occupations Code, Chapter 1071 (Land Surveyors), is presumed to be a surveying service.

(b) Taxable surveying services. Except as provided in subsection (d) of this section, surveying activities described in subsection (a)(5) of this section that are performed for real property located in Texas are taxable as real property services, including the preparation of the following types of surveys:

(1) As-built survey. A survey to depict the relationship of improvements to property boundary lines.

(2) Boundary survey. A survey to determine or confirm a boundary line on real property, or to obtain data for constructing a map or description showing a boundary line.

(3) Easement survey. A survey to determine or confirm by map or description, the boundaries of a tract of real property used in granting the right, privilege, or liberty given to a person or group to use land belonging to another for a specific and definite purpose. An easement survey may document existing easements or be used to establish a new easement.

(4) Land title survey. A boundary survey to determine or confirm boundary locations for title transfer of real property.

(5) Right-of-way survey. A survey to determine or confirm right-of way-lines, center lines, or reference lines, including surface, overhead and underground lines. Such surveys typically document the route of highways, railroads, pipelines, waterways or canals, and transmission lines for electrical or communication purposes.

(6) Subdivision plat. A survey to divide a tract of real property into parcels or lots, and may include the location of items such as street rights-of-ways or easements. The survey is often performed to meet subdivision statutes or county and municipal regulations. This survey may also be referred to as a lot survey.

(7) Title survey. A survey to investigate and evaluate factors affecting and influencing boundary locations, ownership lines, rights-of-way, and easements within or immediately surrounding a tract of real property. A title survey is commonly performed to locate, determine, or reestablish property boundaries for title insurance purposes.

(8) Staking and placement services. A survey that establishes, remotely or on the ground, the location and position of various structures or construction projects in relation to the boundaries of the involved site. The survey is used for defining the positions of buildings, structures, wells, canals, fences, walls, and other physical facilities in relation to the boundaries or property lines of the site.

(c) Nontaxable surveying services. Surveying activities not described in subsection (a)(5) of this section are not taxable as real property services. Examples of nontaxable surveying services include:

(1) As-built verification survey. A survey after construction is completed to determine characteristics of an improvement other than its relationship to property boundary lines, such as principal horizontal and vertical control points, and the dimensions of the finished structures and/or infrastructures.

(2) Construction survey. Activities prior to and during a construction project to measure aspects of an improvement other than its relationship to property boundary lines, such as activities to control elevation, horizontal location, dimensions, or configuration; to determine if the construction was adequately completed; and to obtain dimensions for calculating quantities used in construction.

(3) Design survey. A survey to obtain information that is essential for planning an engineering project or development and estimating its cost.

(4) Existing oil, gas, or oil and gas well ties survey. A survey to gather the locations of existing oil or gas wells in relation to the location of proposed wells.

(5) Geodetic/Control survey. A survey to provide horizontal and/or vertical coordinates of fixed points on the surface of the earth to which supplementary surveys or mapping efforts are adjusted.

(6) Hydrographic survey. A survey to determine the geometric and dynamic characteristics of bodies of water, including a record of a survey, of a given date, of a water covered region, with particular attention to the relief of the bottom and features under the surface.

(7) Monitoring deformation survey. A survey to periodically measure the horizontal and vertical movement or warpage of the surface of the earth or a physical object or structure.

(8) Oil or gas drilling unit, proration unit, and pooled unit plats. A drilling unit, proration unit, or pooled unit plat submitted to the Railroad Commission.

(9) Seismic survey. A survey to determine the subterranean composition and structure in an area, generally by using a vibroseis or small explosives to measure vibrations.

(10) Topographic survey. A survey to determine the configuration, relief, or elevations of a portion of the earth's surface, including the location of natural features.

(11) Tree survey. A survey to locate and identify existing trees on real property. If services are performed to evaluate the health of a tree, to remove a tree, or to prune a tree, those services are taxable landscaping services. See §3.356 of this title (relating to Real Property Service).

(12) Building elevation survey. A survey to certify building elevations that is issued for completion of the National Flood Insurance Program Elevation Certificate. If the survey or certificate issued is used to evaluate risks to property, is used to determine an individual's eligibility for insurance coverage, is used to determine the proper insurance premium rate, or for determining the payment of insurance policy benefits, the survey provided is taxable as an insurance service. See §3.355 of this title (relating to Insurance Services).

(13) Archaeological or historic significance survey. A survey to identify items of archaeological or historic significance performed after boundary surveying has been completed.

(14) Location services. Staking, painting, or otherwise marking the approximate future or existing surface positions of tangible personal property or improvements to realty when the service provider takes no actions listed in subsection (a)(5) of this section to determine or confirm the precise property or easement boundaries or the exact location of the item in relation to the boundaries. For example, marking the approximate location where a portable building is to be installed or staking or re-staking the approximate centerline

of a pipeline is not taxable when the person marking the approximate location does not determine or confirm the location of the structures in relation to the boundaries of real property.

(d) Excluded surveying services. A person performing a surveying service described in subsection (a)(5) of this section is not performing a taxable real property service if:

(1) a contractor purchases the surveying service as part of the construction of a new improvement to residential real property or other improvement immediately adjacent to a new improvement to residential real property; or

(2) a landman performs the surveying service and it is necessary to negotiate or secure land or mineral rights for acquisition or trade, including:

(A) determining ownership;

(B) negotiating a trade or agreement regarding land or mineral rights;

(C) drafting and administering contractual agreements;

(D) ensuring that all governmental regulations are complied with; and

(E) any other action necessary to complete the transaction related to a service described by this subsection, other than an information service described by Tax Code, §151.0038 (Information Service).

(e) Responsibilities of persons providing surveying services.

(1) A person who performs a surveying service described in subsection (a)(5) of this section for consideration must obtain a sales and use tax permit and collect and remit sales or use taxes on all charges for taxable surveying services.

(2) A person who performs a surveying service for a contractor who claims the service is excluded from tax as described in subsection (d)(1) of this section must obtain documentation from the contractor demonstrating the surveying service is being purchased as part of the construction of a new improvement to residential real property or other improvement immediately adjacent to a new improvement to residential real property. The contractor and the person who performs the surveying service must retain a copy of these records in accordance with §3.281 of this title (relating to Records Required; Information Required). If the comptroller later determines that the surveying service purchased by the contractor was taxable, the contractor will be liable for the tax due on the purchase including any related penalty and interest.

(3) A landman who performs a surveying service defined in subsection (a)(5) of this section that is excluded from tax because it meets the requirements in subsection (d)(2) of this section must retain documentation demonstrating the surveying service provided was not taxable. The landman and purchaser must retain these records in accordance with §3.281 of this title.

(4) If a purchaser or seller of a nontaxable surveying service described in subsection (d)(1) or (2) of this section does not maintain the documentation demonstrating that the service is nontaxable, the comptroller may proceed against either the seller or the purchaser, or both until the tax, penalty, and interest have been paid. See §3.282(m) of this title (relating to Auditing Taxpayer Records.)

(f) Resale and exemption certificates. The sale of a surveying service described in subsection (a)(5) of this section is presumed taxable.

(1) Resale certificates. A person who performs a taxable surveying service may issue a resale certificate to a supplier in lieu of paying tax on purchases of tangible personal property if care, custody, and control of the property transfers to the purchaser as part of the taxable surveying service. The care, custody, and control of tangible personal property is transferred to the purchaser of the service when the purchaser has primary possession of the tangible personal property. For example, a person who performs a taxable surveying service may issue a resale certificate to a supplier when purchasing metal pins or PK nails used to mark boundary lines. A person who performs a taxable surveying service may also issue a resale certificate in lieu of paying tax on purchases of taxable services the person intends to transfer to the purchaser as an integral part of the taxable surveying service. A person who performs taxable surveying services owes tax on tangible personal property, such as supplies, machinery and equipment, used or consumed in performing the service.

(A) A person who performs a taxable surveying service may not accept a resale certificate in lieu of collecting tax on a taxable surveying service sold to a purchaser who acquires the service for the purpose of providing a nontaxable service. For example, a person performing taxable surveying services may not accept a resale certificate from a title company on taxable surveying services used in performing nontaxable real estate closing services, even if the title company transfers the survey to the real estate purchaser after the closing. Similarly, a person performing taxable surveying services may not accept a resale certificate from an engineering firm on taxable surveying services acquired for the purpose of providing nontaxable engineering services to either an exempt or non-exempt customer. The engineer owes tax on the purchase of the taxable surveying service used in the provision of the nontaxable engineering service. The engineering firm and the title company are the end-consumers of the taxable surveying services purchased to provide their respective nontaxable services.

(B) A person who performs a nontaxable surveying service may not issue a resale certificate in lieu of paying tax on taxable items used or consumed in performing the nontaxable surveying service. A person who performs a nontaxable surveying service is the end-consumer of all taxable items purchased, leased, or rented to perform the nontaxable service. A person who performs a nontaxable surveying service owes tax on all taxable items purchased to perform the service, unless the items are otherwise exempt.

(2) Exemption certificates. A person who performs a taxable surveying service may accept a properly completed exemption certificate in lieu of collecting tax if an exempt entity directly contracts for and purchases the surveying service. See §3.322 of this title (relating to Exempt Organizations), §3.287 of this title (relating to Exemption Certificates). See also §3.288 of this title (relating to Direct Payment Procedures and Qualifications) regarding purchasers who may issue a direct payment exemption certificate. Purchase vouchers that are issued by governmental entities exempted under Tax Code, §151.309, are acceptable documentation of exempt transactions. See §3.322(g)(3) of this title.

(A) Except as provided by subparagraph (B) of this paragraph, a person who performs a taxable surveying service may not accept an exemption certificate from a person performing nontaxable services for an exempt entity described in Tax Code, §151.309 or §151.310. The person providing the nontaxable services is the end consumer and owes tax on the purchase of the taxable surveying service, even if the person providing the nontaxable services provides a copy of the survey to the exempt entity upon completion of its nontaxable services.

(B) A person who performs a taxable surveying service may accept an exemption certificate from a contractor under Tax Code,

§151.311, on a purchase of a taxable item for use under a contract to improve realty for an organization that is exempt under Tax Code, §151.309 or §151.310.

(g) Unrelated services.

(1) A service is an unrelated service if:

(A) it is not a taxable surveying service nor a service or labor taxable under another provision of Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax);

(B) it is not provided as a part of the taxable surveying service and is of a type that is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of services that are distinct and identifiable from taxable surveying services include nontaxable surveying services, such as a topographical survey, engineering services and architectural or landscaping design services.

(2) Unrelated nontaxable services and taxable surveying services sold or purchased for a single charge. When an unrelated nontaxable service and a taxable surveying service are sold together for a single charge, the total amount charged is presumed to be taxable. This presumption does not apply if the portion of the charge attributable to the taxable surveying service represents 5.0% or less of the total charge.

(A) The person performing the taxable surveying service with an unrelated nontaxable service may overcome the presumption of taxability by separately stating a reasonable charge for the taxable surveying service to the purchaser at the time of the transaction. A purchaser may presume, in the context of this section, that the service provider's separately stated charge for a taxable surveying service is reasonable. If the charge attributable to the taxable surveying service is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the portion of the total charge that is attributable to an unrelated service.

(B) The taxable surveying service provider's books must support the apportionment of the total charge between a taxable surveying service and an unrelated nontaxable service based on either the cost of providing the taxable surveying service or a comparison to the normal charge for each service if it had been performed on a stand-alone basis. If, after reviewing the transaction, the comptroller determines the charge for a taxable surveying service is unreasonable, considering the cost of providing the service or a comparable charge made in the industry for the service, the comptroller may adjust the charges and assess against the person performing the taxable surveying service any additional tax, penalty, and interest due on the taxable surveying service.

(h) Local taxes. See §3.334 of this title (relating to Local Sales and Use Taxes) for additional guidance related to local sales and use tax responsibilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 22, 2022.

TRD-202200977

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Effective date: April 28, 2022

Proposal publication date: September 24, 2021

For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

CHAPTER 876. GENERAL PROVISIONS

40 TAC §876.9

The Texas Council for Developmental Disabilities (TCDD) adopts amendments to §876.9, concerning Charges to Access to Public Records. The rule was adopted without changes to the rule as proposed in the *Texas Register* (46 TexReg 6392) on September 24, 2021, and will not be republished.

The Council received no comments on the proposed rule.

The purpose of the amendments to §876.9 is to correctly identify the statute establishing charges for public records.

The amendments are authorized under the Texas Human Resources Code, §112.020, which provides authority for the Council to adopt rules as necessary to implement the Council's duties and responsibilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2022.

TRD-202201045

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Effective date: April 13, 2022

Proposal publication date: September 24, 2021

For further information, please call: (512) 437-5432

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CHAPTER 877. GRANT AWARDS

40 TAC §§877.1, 877.2, 877.4

The Texas Council for Developmental Disabilities (TCDD) adopts amendments to §877.1 concerning General Provisions, §877.2 concerning Application and Review Process, and to §877.4, concerning Appeal of Funding Decisions. The rules were adopted without changes to the rules as proposed in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6392). The rules will not be republished.

The purpose of the amendments to §877.1 and §877.2 is to apply consistent language to all sections regarding the Council Request for Applications process. The purpose of the amendment to §877.4 is the clarify the source material for the agency appeals process.

The amendments are authorized under the Texas Human Resources Code, §112.020, which provides authority for the Council to adopt rules as necessary to implement the Council's duties and responsibilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2022.

TRD-202201046
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Effective date: April 13, 2022
Proposal publication date: September 24, 2021
For further information, please call: (512) 437-5432

Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Health and Human Services Commission

Title 26, Part 1

The Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code:

Chapter 272, Transition Assistance Services

Subchapter A, Introduction

Subchapter B, TAS Provider Requirements

Subchapter C, Staff Requirements

Subchapter D, Service Delivery Requirements

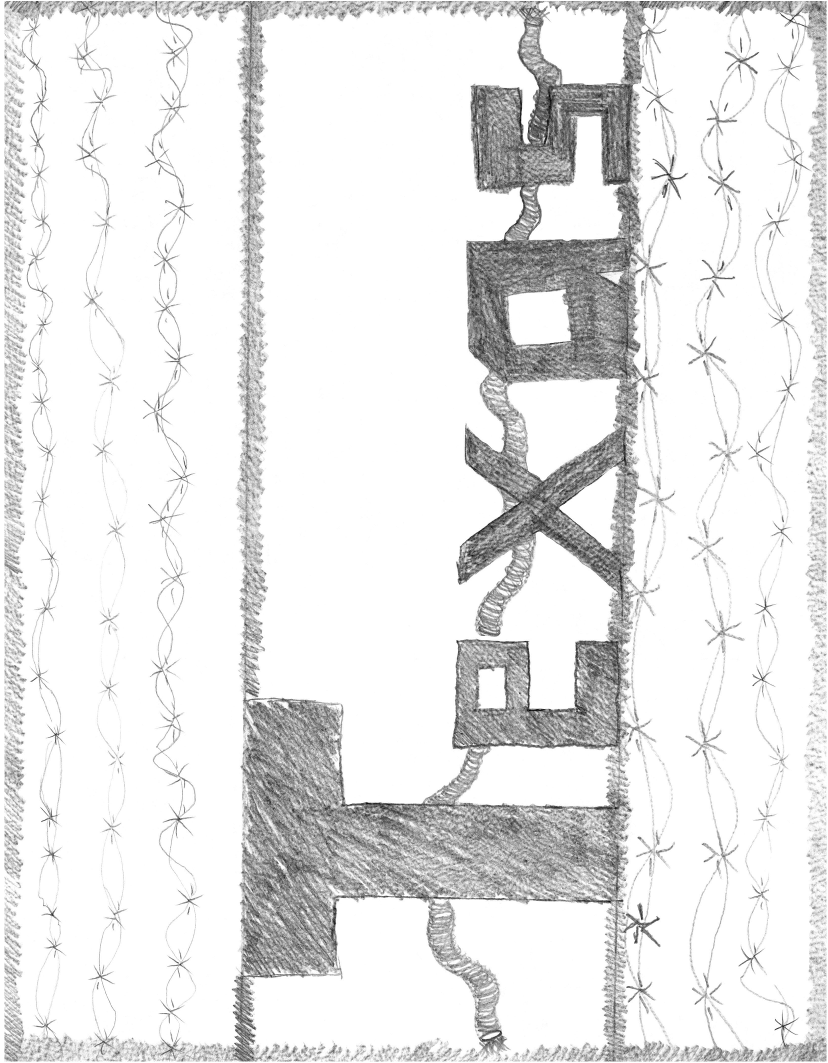
Subchapter E, Claim Payments and Documentation

Notice of the review of this chapter was published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9423). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 272 in accordance with §2001.039 of the Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 272. Any appropriate amendments to Chapter 272 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 26 TAC Chapter 272 as required by the Government Code, §2001.039.

TRD-202201078
Mahan Farman-Farmaian
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: March 29, 2022


TEXAS

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §34.2(e)

DESCRIPTION	Code (§) and Rule Citation(s)	1ST Violation	2nd Violation	3rd Violation
Employing a minor to sell, serve, prepare, or otherwise handle alcoholic beverages	§§61.71(a)(11), 106.09	5-7 days	10-14 days	30 days-Cancel
Permitting a minor to possess or consume an alcoholic beverage	§106.13	3-5 days	6-10 days	18 days-Cancel
Selling an alcoholic beverage to a minor	§106.03	8-12 days	16-24 days	48 days-Cancel
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code)	§§22.12, 24.11, 28.11, 32.24, 69.13, 71.09	3-5 days	6-10 days	18 days-Cancel
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury, death or involving a deadly weapon (as defined in the Texas Penal Code)	§§22.12, 24.11, 28.11, 32.24, 69.13, 71.09	25-35 days	Cancel	Cancel
Failure to report a breach of the peace	§§11.61(b)(21), 61.71(a)(30)	2-5 days	4-10 days	12 days-Cancel
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics or synthetic cannabinoids by a licensee or permittee or possession of any equipment used or designed for the administering of narcotics or synthetic cannabinoids	§104.01	25-35 days	Cancel	Cancel

Selling or serving an alcoholic beverage to an intoxicated person – no associated bodily injury or death	§§11.61(b)(14), 61.71(a)(6), 101.63	8-12 days	16-24 days	Cancel
Intoxication of the license or permit holder or any employee on a licensed premise	§§11.61(b)(13), 104.01(a)(5)	17-25 days	34-50 days	Cancel
Soliciting any person to buy drinks for consumption by the retailer or any of its employees, servants, or agents	§104.01(a)(4)	30 days-Cancel	Cancel	Cancel
Permitting public lewdness, sexual contact, or obscene acts, or exposure of a person or permitting a person to expose themself on a licensed premises	§§61.71(a)(10), 104.01(a)	5-7 days	10-14 days	Cancel
Selling, serving, or delivering alcoholic beverages during prohibited hours or consuming or permitting consumption of an alcoholic beverage during prohibited hours on a licensed premises	§§11.61(b)(22), 61.71(a)(17), 105.01-105.10	8-12 days	16-24 days	Cancel
Refusing inspection of premises	§101.04	10-14 days	30-Cancel	Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment	§104.01 (a)(3)	5-7 days	10-14 days	30-Cancel
Trafficking of an adult with intent that adult engage in forced labor or services or receiving a benefit including labor or services per §20A.02(1-2) of the Penal Code;		Cancel	Cancel	Cancel

Trafficking an adult through force, fraud, coercion, causing prostitution-related conduct, receiving a benefit, or engaging in sexual conduct with an adult per §20A.02(3-4) of the Penal Code; Trafficking of one child with intent that child engage in forced labor or services, or receiving a benefit of such trafficking, including labor or services per §20A.02(5-6) of the Penal Code; Trafficking of one child causing child to engage in, be victim of, or conduct prohibited by sexual offenses described in §20A.02(7), received benefit, or participation in sexual conduct with a child trafficked per §20A.02(7-8) of the Penal Code; Continuous trafficking of persons under §20A.03 of the Penal Code				
Prostitution		30 days - Cancel	Cancel	Cancel
Promotion of prostitution		Cancel	Cancel	Cancel
Prohibited Activities by Persons Younger Than 18	§106.15	5 days	60 days	Cancel
Presence or Employment of Certain Minors at Sexually Oriented Business	§106.17	30 days	60 days	Cancel

Failure to timely provide records, including videos, related to violation **not** involving serious bodily injury or death or any smuggling or trafficking-related offense	§§5.32, 5.44, 11.61(b)(2), 61.71(a)(1)	8-12 days	16-24 days	Cancel
Failure to timely provide records, including videos, related to violation involving serious bodily injury or death or any smuggling or trafficking-related offense	§§5.32, 5.44, 11.61(b)(2), 61.71(a)(1)	30 days	60 days	Cancel

Figure: 16 TAC §34.10(g)

$250		$500		$1,000	
Failure to Display License or Permit	§§11.04 and 61.01	Permit Minor in Package Store	§109.53	Open Saloon - Sale to Non-Member	§§32.01(a), 32.17 (a)(1) and 32.17 (b)
Failure to Timely File Monthly Report	§§201.075 (DS & Wine), 203.13 (Malt Bev)	Cash Law	§§61.73 and 102.31; Rule 45.131	Conspiracy to Receive Unlawful Benefit	§104.03
Failure to Pay State Franchise Tax	§§11.61(b)(5), 61.712	Credit Law	§102.32; Rule 45.130	Inducement	§§102.04 (b)(6);102.07 (a)(8); 102.12; 108.06; Rule 45.110
Failure to Pay State Hotel Tax	§§11.61(b)(5), 61.712	Private Club - Storage of Alco. Bev. not Owned by Members	§32.01(a)(1); Rule 41.56	Unlawful Agreement	§102.16
Failure to Maintain Acceptable Gross Receipts or Sales Tax Bond	§28.17	Inspection Refusal	§32.12	Illegal Contract/Alternating Brewing/Manufacturing	§62.14
Failure to Maintain Acceptable Alco. Bev. Excise Tax Bond	§§204.01 - .03	Maintaining a Noisy Establishment	§11.61(b)(9)	Illegal Contract Distilling - Spirits	§§11.06; 14.01
Failure to Maintain Acceptable Conduct Surety Bond	§§11.11(a)(2), 61.13; Rule 33.41	Maintaining an Unsanitary Establishment	§11.61(b)(9)	Refilling Distilled Spirits Bottle on Licensed Premise	§28.08
Failure to Report Corporate Change	§28.04 and Rule 33.94	Brand Substitution w/o Customer Consent	§§28.081;104.04; 61.74(a)(13)	Permitting Removal of Alco. Bev. from Premise	§§28.10, 32.17(a)(4)

$250		$500		$1,000	
Possession of Unauthorized Alco. Bev.	§§25.09, 26.01(a), 69.12, 71.04	Poss. of Distilled Spirits w/o ID Stamp (Local Dist. Stamp)	§§28.15(a); 32.20(a)	Sell/Deliver Alco. Bev. while under Suspension	§11.68
Failure to Maintain Acceptable State Sales Tax Bond	§11.61(b)(8)	Failure to Invalidate ID Stamps	§28.09(a); Rule 41.60(h)	Operating without Required License or Permit	§§11.01, 61.01
Failure to Pay State Sales Tax	§§11.61(c)(2), 61.712	Mixed Bev. – Possession of Un-invoiced/Unauthorized Alco. Bev.	§28.06 (a), (b)	Permit Consumption of Malt Beverage at Off- Premise Location	§71.01
Failure to Pay or Report Mixed Bev. Gross Receipts or Sales Tax	§§11.61(b)(5), 61.712	Possession of Alco. Bev. Unfit for Consumption	§103.07	Store Alco. Bev. Off Licensed Premise	§§69.10, 71.06
Failure to Maintain Performance Bond	§§11.61(b)(8), 61.71(a)(l)	Sell/Deliver Alco. Bev. in Open Container	§§22.11, 24.10	False/Misleading Statement in Application, Document, Report Etc.	§§11.46 (a)(4), 11.61(b)(4), 61.43(a)(4), and/or 61.71(a)(4) and (11)
Failure to Timely Provide Records	§§5.32, 5.44 (a)(6); Rule 41.2	Acquired Alco. Bev. from Another Retailer	§§69.09, 71.05	Illegal Interior Signage	§61.74(a)(1); Rule 45.113(d)
Failure to Maintain or Properly Document Invoices	§5.32; Rule 41.2	Purchase of Alco. Bev. while on Delinquent List	§102.32; Rule 45.130(g)	Prohib. Relationship with Different Levels of Industry	§§102.01; 102.07; 102.15
Failure to Operate under the Required Tradename	§§61.05, 108.52(c)	Consignment Sale of Alco. Bev.	§§102.07(a)(4); 61.71(a)(8)	Sale to Respondent on Delinquent List	§102.32(d); Rule 45.130(f)

$250		$500		$1,000	
Outdoor Advertising Violation	Code Chapter 108	Sale away from Licensed Premise	§§11.06, 61.06, 32.17(a)(4)	No Permanent Food Service Facility at Addressed Location	§§25.13, 28.18, 32.23, 69.16; Rule 33.5(c)
Failure to Post Required Sign	§§11.042, 26.05, 61.111, 71.10, 104.07; Rule 31.4	On-Premises Promotions	Rule 45.103	Ineffective Instruction	Rules 50.3(e), 50.4(b), 50.5(b)
Food & Bev. Permit Holder: Incomplete / Missing Records	§5.32; Rule 33.5 (f), (k)	Session Class Size Exceeds 50	Rules 50.6(a), 50.26(b)(1), (b)(17)	Illegal Sampling / Tasting Event	§§16.01(c), 24.12, 26.08, 37.01
Failure to Complete or File Excise Tax Report	§5.32, Rule Ch. 41, Subch. C	Failure to Place Retailer on Delinquent List	Rule 45.130	Program Taught by Uncertified Trainer	Rule 50.25(c)
Failure to Meet Trainer Certification Requirements	Rule 50.26(b)	Failure to Report Cash Law Violation	§102.31(c); Rule 45.131(e)	In-House Program Certified Non-Employees	Rule 50.8
Failure to Properly Issue Trainee Certificates	Rule 50.9(b), (c)	Failure to Report Credit Law Violation	§102.32(d); Rule 45.130(e)	Exclusive Outlet	§§102.13, 109.08
Failure to Properly Schedule/Cancel Training Session	Rule 50.10(a), (b)	Transporting w/o Required Invoice	§§22.08, 23.04, 24.04; Rule 41.14	Commercial Bribery	§102.12
Failure to Meet Testing Requirements	Rule 50.26(b)(19)	Records Incomplete or Missing	§32.13; Rule 41.6	Prohibited Interest	§§22.06, 51.06, 102.03,102.04, 102.09, 102.10, 102.11, 102.18
Failure to Meet Requirements-Sch/Pgm Certification	Rule 50.13	Membership/ Membership Committee Violations	§§32.09, 32.16; Rules 41.51, 41.56	Unauthorized Manufacturing/ Brewing Activity	§§11.01, 61.01

$250		$500		$1,000	
Failure to Properly Prepare/File Session Reports	Rule 50.10(e)	Improper Financial Transactions	§32.06; Rules 41.53, 41.54	Transporting Liquor w/out Required Transport Permit	§§11.01, 41.01, 43.03
		No Written Consent to Scan DL/ID	§109.61(b); Rules 41.51(f), 41.56	Unauthorized Sale/Brew Products for On-Premise Consumption	§62.12, 62.122
		Adequate Food Service Not Available	Rule 33.5(c)	Place / Manner - Violated Waiver Order	§§11.61(b)(7), 61.71(a)(17); Rule 34.3
		Food Items Not Prepared/ Assembled on Premises	Rule 33.5(c)	Place / Manner - Over Serving	§§11.61(b)(7), 32.17(a)(8), 61.71(a)(17); Rule 34.3
		Alcohol Sale Hours beyond Food Sale Hours	Rule 33.5(d)	Place / Manner - Assaultive Offenses	§§11.61(b)(7), 32.17(a)(8), 61.71 (a)(17); Rule 34.3
		Engage in Promotional Activity w/o License/Permit	§§35.01, 36.01, 50.001		
		Illegal Stocking/ Shelving/ Product Rotation	§102.20; Rule 45.109		
		Unauthorized Market Research	§§102.07, 108.06; Rule 45.113(b)(4)		
		Unauthorized Sweepstakes Contest	§§102.07(e), 108.061; Rule 45.106		

$250	$500		$1,000
	Unauthorized Coupon	§§102.07(d), 108.06; Rule 45.113	
	Failed to Meet Labeling Requirements	§§37.07, 101.67	
	Illegal Bar Spending	§§102.07(g)(2), 102.15(b)(2); Rules 45.113, 45.117	
	Illegal Refund/ Exchange by Wholesaler/ Distributor	§§11.61(b)(2), 61.74(a)(1), 104.05(d), (e)	
	Possess/ Transport/ Store Illicit Beverage	§103.01	
	Food Service Not Available/ Adequate (Private Club)	§32.03(g); Rule 41.55	
	Failure to Maintain ID Stamp Reports	Rule 41.60	
	Possess Un-Affixed ID Stamps	§§28.151, 32.201	
	Unauthorized Repackaging of Alco. Bev.	§104.05	
	Unauthorized Breakdown & Sale of Alco. Bev. Co-packs	§§102.07(a)(5), 108.035; Rule 45.120(c)	

$250	$500		$1,000
	Unauthorized Sale of Alco. Bev. to a Retailer	§§23.01(a)(2), 24.01(a)(2), 25.01(a)(1), 26.01(a), 69.01, 71.01.	
	Alco. bev. not in tamper-proof container	§§28.1001(a)(2)(C), 32.155(a)(2); Rule 41.16	

Figure: 22 TAC §139.35(b)

CLASSIFICATION	VIOLATION	CITATION	SUGGESTED SANCTIONS
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation / $5,000.00
	Failure to exercise care and diligence in the practice of engineering	§§137.55(b), 137.63(b)(6)	1 year suspension / $2,500.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension / $5,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension / $5,000.00
	Felony conviction with incarceration	§ 139.43(a)	Revocation / $5,000.00
Licensing	Fraud or deceit in obtaining a license	§§1001.452(2) 1001.453	Revocation/$5,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year suspension/$2,500.00
	Enter into a business relationship which is in violation of 137.77 (Firm Compliance)	§137.51(d)	1 year suspension / $1,500.00
Ethics Violations	Failure to engage in professional and business activities related to the practice of engineering in an honest and ethical manner	§137.63(a)	2 year suspension / $4,000.00
	Failure to design a structure associated with windstorm insurance that complies with cited windstorm code design criteria	137.63(b)(1)	1 year suspension / $3,000.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful	§§137.57(a)	2 year suspension / $4,000.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§§137.57(a)	1 year suspension / $1,500.00
	Conflict of interest	§137.57(c), (d)	2 year suspension / $4,000.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year suspension / $4,000.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year suspension / $4,000.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year suspension / $4,000.00

	Offer or practice engineering while license is expired or inactive	§§137.7(a) and 137.13(a) and (h)	1 year suspension / $750.00
	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year suspension / $2,500.00
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand / $2,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year suspension / $2,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year suspension / $2,500.00
	Aiding and abetting unlicensed practice or other assistance	§§137.63(b)(3), 137.63(c)(1)	3 year suspension / $5,000.00
	Failure to report violations of others	§137.55(c)	Reprimand / $2,500.00
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand / $2,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand / $2,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year suspension / $2,500.00
	Competitive bidding with governmental entity	§137.53	Reprimand / $2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§§137.17(p)(2), (3), 137.63(a)	2 year suspension / $2,500.00[4,000.00]
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
	Failure to provide plans and/or specs to TDLR/RAS for assessment within 20 days of issuance	§§1001.452(5), 137.63(b)(1) and (2)	Informal Reprimand / $750.00
Improper use of Seal	Failure to safeguard seal and/or electronic signature	§137.33(d)	Reprimand / $1,500.00
	Failure to sign, seal, date, or include firm identification on work	§§137.33(e), (f), (h), (n), 137.35(a), (b)	Reprimand / $750.00
	Alter work of another	§§137.33(i), 137.37(a)(3)	1 year suspension / $2,500.00
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand / $1,500.00
	Practice or affix seal with expired or inactive license	§§1001.401(c), 137.13(h), 137.37(a)(2)	1 year suspension / $750.00

	Practice or affix seal with suspended license	§137.12, §137.37(a)(2)	Revocation / $5,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas	§137.31(e)	1 year suspension / $2,500.00
	Sealing work endangering the public	§137.37(a)(1)	Revocation / $5,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand / $750.00
	Improper use of standards	§137.33(c)	Reprimand / $750.00
	Use of non-compliant seal	§§137.31, 137.33(o)	Reprimand / $250.00
Administrative	[Failure to return seal imprint and/or portrait]	[§§133.97(e), (f); 137.31(a)]	[Reprimand / $250.00]
	Failure to report: change of address or employment, or of any criminal convictions, or legal name change	§137.5(a), (b), and/or (c)	Reprimand / $150.00
	Failure to respond to board communications	§137.51(c)	Reprimand / $750.00
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand / $500.00

Figure: 22 TAC §139.35(c)

		SUGGESTED SANCTIONS	
VIOLATION	**CITATION**	**FIRST OCCURRENCE**	**SUBSEQUENT OCCURRENCES**
Use of "Engineer" title when not licensed	§§1001.004(c)(2)(B)(C); 1001.301(b)(1)	Voluntary Compliance Cease and Desist	Injunctive / Criminal and $1,500.00
Use of "P.E." designation, or claim to be a "Professional Engineer" when not licensed	§1001.301(b)(2)-(6), (c), and (e)	Cease and Desist and $2,500.00	Injunctive / Criminal and $5,000.00
Offer or attempt to practice engineering (e.g., through solicitation, proposal, contract, etc.) when not licensed or registered	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405	Cease and Desist and $2,500.00	Injunctive / Criminal and $5,000.00
Representation of ability to perform engineering (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.) when not registered	§1001.405(e)	Voluntary Compliance	Cease and Desist and $750.00
Use of word "engineer" or any variation or abbreviation thereof under any assumed, trade, business, partnership, or corporate name when not registered	§1001.405(e)	Voluntary Compliance	Injunctive / Criminal and $5,000.00
Unlicensed practice of engineering	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405; §§137.51(e), 137.77(a)	Cease and Desist and $3,000.00	Injunctive / Criminal and $5,000.00
Unauthorized use of a P.E. seal	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405; §§137.37(b), 137.77(a)	Cease and Desist and $3,000.00	Injunctive / Criminal and $5,000.00
Fraudulent use of a P.E. seal	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405; §§137.37(b), 137.37(c) 137.77(a)	Cease and Desist and $3,000.00	Injunctive / Criminal and $5,000.00

Figure: 22 TAC §139.37(b)

CLASSIFICATION	VIOLATION	CITATION	SUGGESTED SANCTIONS
Surveying Misconduct	Gross negligence	§1071.401(a)(2); §§138.55(a), (b)	Revocation / $1,500
	Failure to exercise care and diligence in the practice of surveying	§§138.55(b), 138.63(b)(6)	1 year suspension / $1,000
	Incompetence	§1071.401(a)(2); §§138.59(a), (b); 138.89(b)	3 year suspension / $1,500
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional land surveyor	§139.43(b)	Reprimand / 3 year suspension
	Felony conviction with incarceration	§139.43(a)	Revocation
	Failure to allow LSLS access to County Surveyor Records	§1071.361(a)	1 year suspension / $1,000
	Failure to comply with any regulations prescribed by the County Surveyor or the commissioner's court for protecting and preserving records	§1071.361(c)	1 year suspension / $1,500
	LSLS directly or indirectly interested in the purchase or acquisition of title to public land	§1071.401(b)	Revocation / $1,500
	Failure to use equipment and methods of practice capable of attaining the tolerances specified	§138.83	Reprimand / $1,000
	Failure to respect junior and senior rights for boundary retracement.	§138.85(1)	1 year suspension / $1,500
	Failure to follow the footsteps of the original surveyor.	§138.85(2)	1 year suspension / $1,500
	Failure to rely upon appropriate deeds and/or other documents including those for adjoining parcels, for the location of the boundaries of the subject parcel(s).	§138.85(3)(A)	1 year suspension / $1,500
	Failure to assume the responsibility for such research of adequate thoroughness to support the determination of the location of intended boundaries of the land parcel surveyed.	§138.85(3)(B)	1 year suspension / $1,500
	Failure to connect all boundaries to identifiable physical monuments related to corners of record dignity. In the absence of such monumentation, failure to report the surveyor's opinion of the boundary location by other appropriate physical evidence.	§138.85(3)(C)	1 year suspension / $1,500

	Failure to cite a reference on the drawing and the prepared description to the record instrument that defines the location of adjoining boundaries, if appropriate.	§138.85(3)(D)	1 year suspension / $1,500
	Failure to follow the intent of the boundary location as evidenced by the record.	§138.85(4)	1 year suspension / $1,500
	Failure to respect the proper application of the rules of dignity (priority) of calls, and applicable statutory and case law of Texas.	§138.85(5)	1 year suspension / $1,500
	Failure to set monuments at sufficient depths to retain a stable and distinctive location or be of sufficient size to withstand the deteriorating forces of nature or be of such material that in the surveyor's judgment will best achieve this goal.	§138.87(a)	1 year suspension / $1,500
	Failure to set, or leave as found, an adequate quantity of monuments of a stable and reasonably permanent nature to represent or reference the property or boundary corners. Failure to show and describe survey markers with sufficient evidence of the location of such markers on the surveyors' drawing, written description or report.	§138.87(b)	1 year suspension / $1,500
	Failure to tie corners of record to the boundary of the affected tract in metes and bounds descriptions prepared to be used in easements.	§138.87(c)	1 year suspension / $1,500
	Failure to mark, in a way that is traceable to the responsible registrant or associated employer, all monuments set.	§138.87(d)	1 year suspension / $1,500
	Failure of registrant/licensee to ensure that document complies with all standards certified to.	§138.89(a)	1 year suspension / $1,500
	Failure to delineate the relationship between record monuments and the location of boundaries surveyed. Failure to show such relationship on the survey plat, if a plat is prepared, and/or separate report and failure to recite such in the description with the appropriate record referenced thereon and therein.	§138.91(a)	1 year suspension / $1,500
	Failure to provide a definite and unambiguous identification of the location of boundaries and describe all monuments found or placed for descriptions prepared	§138.91(b)	1 year suspension / $1,500

	for defining boundaries.		
	Failure to reference courses by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.	§138.91(c)	1 year suspension / $500
	Failure to note and describe, upon the survey drawing, which boundary monuments were found or placed by the surveyor and failure to note other monuments of record dignity relied upon to establish the corners of the property surveyed.	§138.91(e)	1 year suspension / $1,500
	If any report consists of more than one part, failure to note the existence of the other part or parts.	§138.91(f)	Reprimand / $500
	If a written narrative is prepared in lieu of a drawing / sketch to report the results of a survey, and there is a failure to contain sufficient information to demonstrate the survey was conducted in compliance with the Surveying Act and rules.	§138.91(g)	1 year suspension / $1,500
	Failure to apply and adhere to the rules of the board when establishing or delineating the perimeter boundary of the purposed subdivision.	§138.93	1 year suspension / $1,500
	Falsifying the purpose of a metes and bounds description when preparing a description for a political subdivision	§138.95(1)	1 year suspension / $1,500
	Preparing a description for a political subdivision that is ambiguous and non-locatable on the ground by ordinary surveying procedures	§138.95(2)	1 year suspension / $1,500
	Failure to ensure record monuments or physical monuments called for in the description prepared for a political subdivision	§138.95(3)	1 year suspension / $1,500
	Failure to perform an on the ground survey for any course and distance recited in the description when such is not referenced in a recited record.	§138.95(4)	1 year suspension / $1,500
	Failure to place the required notation on descriptions prepared for political subdivisions.	§138.95(5)	Reprimand / $500
Licensing and Registration	Fraud or deceit in obtaining a registration or license	§1071.401(a)(1)	Revocation / $1,500
	Retaliation against a reference provider	§138.63(c)(2)	1 year suspension/

			$1,000
	Enter into a business relationship which is in violation of 138.77 (Firm Compliance)	§138.51(d),	1 year suspension / $500
Ethics Violations	Failure to engage in professional and business activities related to the practice of surveying in an honest and ethical manner	§138.63(a)	2 year suspension / $1,500
	Misrepresentation; issuing oral or written assertions in the practice of surveying that are fraudulent or deceitful	§§138.57(a)(1),(2)	2 year suspension / $1,500
	Misrepresentation; issuing oral or written assertions in the practice of surveying that are misleading	§138.57(a)(3)	1 year suspension / $1,000
	Conflict of interest	§§138.57(c), (d)	2 year suspension / $1,500
	Inducement to secure specific surveying work or assignment	§138.63(c)(3)	2 year suspension / $1,500
	Accept compensation from more than one party for services on the same project	§138.63(c)(4)	2 year suspension / $1,000
	Solicit professional employment in any false or misleading advertising	§138.63(c)(5)	1 year suspension / $1,000
	Offer or practice surveying while license or registration is expired or inactive	§§138.7(a) and 138.13(a) and (h)	1 year suspension / $500
	Failure to act as a faithful agent to their employers or clients	§138.63(b)(4)	1 year suspension / $1,000
	Reveal confidences and private information	§§138.61(a), (b), (c)	Reprimand / $1,000
	Retaliation against a complainant	§138.63(c)(2)	1 year suspension / $1,000
	Aiding and abetting unlicensed practice or other assistance	§§138.63(b)(3), 138.63(c)(1)	3 year suspension / $1,500
	Failure to report violations of others	§138.55(c)	Reprimand / $1,000
	Failure to prevent violation of laws, code, or ordinances	§138.63(b)(1), (2)	Reprimand/ $1,000
	Failure to conduct surveying and related business in a manner that is respectful of the client, involved parties and employees	§138.63(b)(5)	1 year suspension / $1,000.00

	Competitive bidding with governmental entity	§138.53	Reprimand / $2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§§138.17(p)(2), (3), 138.63(a)	2 year suspension / $1,000.00
	Action in another jurisdiction	§138.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
Improper use of Seal	Failure to safeguard seal and/or electronic signature	§138.33(d)	Reprimand / $500
	Failure to sign, seal, date, include caveat, or include firm identification on work	§§138.33(e), (f), (h), (m), 138.35(a), (b); 138.91(d)	Reprimand / $500
	Sealing work not performed or directly supervised by the professional surveyor	§§1071.351(d), 138.33(b)	Reprimand / $1,000
	Practice or affix seal with expired or inactive license or registration	§§[1071.263(a),] 138.13(h), 138.37(a)(2)	1 year suspension / $500
	Practice or affix seal with suspended license or registration	§138.12, §138.37(a)(2)	Revocation / $1,500
	Preprinting of blank forms with surveyor seal; use of a decal or other seal replicas	§138.31(e)	1 year suspension / $1,000
	Sealing work endangering the public	§138.37(a)(1)	Revocation / $1,500
	Work performed by more than one surveyor not attributed to each surveyor	§138.33(g)	Reprimand / $500
	Improper use of work product of others	§138.33(c)	Reprimand / $500
	Use of non-compliant seal	§§138.31, 138.33(o)	Reprimand / $250.00
Administrative	[Failure to return seal imprint and/or portrait]	[§§134.97(d), (e); 138.31(a)]	[Reprimand / $250]
	Failure to report: change of address or employment, or of any criminal convictions, or legal name change	§§138.5(a), (b), and/or (c)	Reprimand / $150
	Failure to respond to board communications	§138.51(c)	Reprimand / $500
	Failure to include “inactive” or “retired” representation with title while in inactive status	§138.13(f)	Reprimand / $500

Figure: 22 TAC §139.37(c)

		SUGGESTED SANCTIONS	
VIOLATION	**CITATION**	**FIRST OCCURRENCE**	**SUBSEQUENT OCCURRENCES**
Use of "R.P.L.S" or "L.S.L.S. designation, or claim to be a "Registered Professional Land Surveyor" or "Licensed State Land Surveyor" when not registered or licensed	§1071.251(d); §138.1	Cease and Desist and $1,000	$1,500 penalty and Injunctive / Criminal Referral
Offer or attempt to practice surveying (e.g., through solicitation, proposal, contract, etc.) when not registered or licensed	§§1071.251(c)	Cease and Desist and $1,000	$1,500 penalty and Injunctive / Criminal Referral
Representation of ability to perform surveying (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.) when not registered or licensed	§§1071.251(d); 1071.352(a)	Voluntary Compliance	Cease and Desist and $500
Unlicensed or unregistered practice of surveying	§1071.251(b); §§138.51(e), 138.77(a)	Cease and Desist and $1,000	$1,500 penalty and Injunctive / Criminal Referral
Unauthorized use of an R.P.L.S. or L.S.L.S. seal	§§1071.251(b), (c), (d); ~~1001.352(a)~~1071.352(a); §§138.37(b)	Cease and Desist and $1,000	$1,500 penalty and Injunctive / Criminal Referral
Fraudulent use of an R.P.L.S. or L.S.L.S. seal	§§1071.251(b), (c), (d); ~~1001.352(a)~~1071.352(a)~~;~~ §§138.37(b), 138.37(c), 138.77(a)	Cease and Desist and $1,500	$1,500 penalty and Injunctive / Criminal Referral

Figure: 26 TAC §745.617(a) [40 TAC §745.617(a)]

Type of Operation	Process for Submitting a Request for a Background Check
(1) All operation types except listed family homes[, employer-based child care operations, and shelter care operations]	Must submit a request for a background check online through your Licensing account.
(2) Listed family homes[, employer-based child care operations, and shelter care operations]	Must submit a request for a background check either: (A) Online through your Licensing account; or (B) By sending in a signed form provided by your local Licensing office or the CBCU.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - February 2022

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 February 2022 is $53.90 per barrel for the three-month period beginning on November 1, 2021, and ending January 31, 2022. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of February 2022, 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 February 2022 is $3.27 per mcf for the three-month period beginning on November 1, 2021, and ending January 31, 2022. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2022, from a qualified low-producing well, is eligible for a 25% 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 February 2022 is $91.63 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 February 2022, 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 February 2022 is $4.46 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of February 2022, 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.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

Issued in Austin, Texas, on March 29, 2022.

TRD-202201079
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: March 29, 2022

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/04/22 - 04/10/22 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/04/22 - 04/10/22 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202201081
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 29, 2022

♦ ♦ ♦

Deep East Texas Council of Governments

Deep East Texas Council of Governments Area Agency on Aging Public-Notice Request for Proposals Senior Nutrition Program

The Deep East Texas Council of Governments - Area Agency on Aging (DETAAA) is seeking proposals from interested and qualified organizations to provide nutrition services for PSA region #14 - Deep East Texas Senior Nutrition Program FY 2022 - 2023 contract cycle.

Nutrition services means the procurement, preparation, transport, and service of meals in both congregate settings and older adults' homes and also includes outreach, client assessments, monthly program reporting and fiscal administration. The program's objective is to provide high-quality, nutritionally balanced meals, nutrition counseling and education and related supportive services to persons aged 60 years and older. Funding for these services is provided through the Older Americans Act, Title IIIC, and is limited.

Interested responders should refer to DETCOG RFP No. AAA-SNP-23.

Proposals will be scored on the basis of:

Quality Assurance - 30 Points Possible

Agency's History, Performance and Capacity - 30 Points Possible

Utilization of Program Funds - 40 points possible

Submission of Letter of Intent by April 25, 2022 - 5 BONUS Points

Total Points Possible - 105

DETCOG-AAA Reserves the right to reject all proposals or negotiate with any or all qualified applicants.

Complete details of RFP No. AAA-SNP-23 and Conditions for Submittal can be found at:

https://www.detcog.gov/rfps-rfqs

or by contacting

Tyson Silas

(936) 634-2247 ext 5356

tsilas@detcog.gov

The closing date of this RFP is 2:00 p.m. CDT, Friday, May 27, 2022

TRD-202201086
Lonnie Hunt
Executive Director
Deep East Texas Council of Governments
Filed: March 30, 2022

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 9, 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 **May 9, 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: CHEVRON PHILLIPS CHEMICAL COMPANY LP; DOCKET NUMBER: 2021-1056-AIR-E; IDENTIFIER: RN100215615; LOCATION: Orange, Orange County; TYPE OF FACILITY: polyethylene manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 4140A, Special Conditions Number 1, Federal Operating Permit Number O1310, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: $49,950; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $19,980; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: City of Round Rock, City of Cedar Park, and City of Austin; DOCKET NUMBER: 2020-0964-MLM-E; IDENTIFIER: RN100822600; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05EN54, Part III, Section A.1, by failing to maintain a complete stormwater pollution prevention plan; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010264002, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: $19,480; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $19,480; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: City of Sinton; DOCKET NUMBER: 2021-0676-MWD-E; IDENTIFIER: RN101916740; LOCATION: Sinton, San Patricio 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 WQ0010055001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $14,062; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $11,250; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: City of Streetman; DOCKET NUMBER: 2021-0969-PWS-E; IDENTIFIER: RN101424323; LOCATION: Streetman, Freestone County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of each quarter for the first quarter of 2019 through the first quarter of 2021; PENALTY: $4,255; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Emilio Chavez Cano; DOCKET NUMBER: 2020-0897-AGR-E; IDENTIFIER: RN102078649; LOCATION: Miles, Runnels County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §305.125(1) and §321.38(b)(2) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG921548, Part III, A.4(c)(1)(ii), by failing to maintain a minimum buffer zone of 150 feet between a control facility of an animal feeding operation and a water well used for private water supply; 30 TAC §305.125(1) and §321.39(b)(2) and TPDES General Permit Number TXG921548, Part III, A.10(a), by failing to ensure that the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event; 30 TAC §305.125(1) and §321.39(c)(1) and TPDES General Permit Number TXG921548, Part III, A.10(e), by failing to remove sludge from the retention control structure (RCS) in accordance with the design schedule for cleanout to prevent the accumulation of sludge from encroaching on the volumes reserved for minimum treatment; 30 TAC §305.125(1) and §321.46(c)(3) and TPDES General Permit Number TXG921548, Part III, A.15(a)(4)(i), by failing to conduct monthly inspections on mortality management systems, including containers, burial sites, composting facilities, incinerators, and chemical storage and disposal areas; 30 TAC §305.125(1) and §321.47(e)(4) and TPDES General Permit Number TXG921548, Part III, A.6(e), by failing to ensure

that adequate equipment is available and maintained in good working order to remove such manure, sludge, and wastewater from the RCS as required to maintain the required volume; and 30 TAC §305.125(1) and (4) and §321.31(a), TWC, §26.121(a)(1), and TPDES General Permit Number TXG921548, Part III, A.5(a)(2), by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state; PENALTY: $11,375; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Lake Livingston Water Supply Corporation; DOCKET NUMBER: 2021-0841-PWS-E; IDENTIFIER: RN105711907; LOCATION: Trinity, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(d)(3)(A), by failing to have the recycle stream returned to the raw waterline upstream of the raw water sample tap; 30 TAC §290.42(d)(5), by failing to provide a flow-measuring device to measure the flow rate through specific treatment processes to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities; 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines by the use of a label or by various colors of paint; 30 TAC §290.42(e)(4)(A), by failing to maintain a full face self-contained-breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards and a small bottle of fresh ammonia for testing for chlorine leakage that is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(m) and §290.43(e), by failing to maintain the intruder-resistant fence around each water treatment plant, potable water storage tank, pressure maintenance facility, and related appurtenances; 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more wells with a total capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(2)(E) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), (ii)(I), and (iv), (B)(iii), (iv), and (ix), and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two ground storage tanks annually at Impala Woods Plant; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two discharge meters at least once every twelve months; 30 TAC §290.46(s)(2)(B)(i) and (iii), by failing to calibrate the benchtop turbidimeter and on-line turbidimeter with primary standards at least once every 90 days; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contain the name of the facility and an emergency telephone number where a responsible official can be contacted; and 30 TAC §290.111(h)(2), by failing to submit properly completed Surface Water Monthly Operating Reports with the required turbidity and disinfectant residual data to the ED; PENALTY: $29,180; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2021-0885-MWD-E; IDENTIFIER: RN102287091; LOCATION: Quitman, Wood 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 WQ0014055001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $10,875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: NISHAT BUSINESS LLC dba Your C Store 2; DOCKET NUMBER: 2021-1111-PST-E; IDENTIFIER: RN102716347; LOCATION: La Grange, Fayette County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tanks (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.606, by failing to maintain required operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: $3,776; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: Peaceful Lane Village, LLC and Wild Mountain Holdings, LLC; DOCKET NUMBER: 2021-0662-PWS-E; IDENTIFIER: RN102692167; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of cyanide sampling to the executive director (ED) for the January 1, 2020 - December 31, 2020, monitoring period; 30 TAC §290.106(e), by failing to provide the results of arsenic and fluoride sampling to the ED for the fourth quarter of 2020; 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of nitrate and volatile organic chemical contaminants sampling to the ED for the January 1, 2020 - December 31, 2020, monitoring period; 30 TAC §290.107(e), by failing to provide the results of synthetic organic chemical contaminants Group 5 sampling to the ED for the January 1, 2018 - December 31, 2020, monitoring period; 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the ED for the fourth quarter of 2019 and the first, second, and third quarters of 2020; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2020 - June 30, 2020, and the July 1, 2020 - December 31, 2020, monitoring periods; and 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the maximum contaminant level for combined uranium, fluoride, and arsenic during the third quarter of 2020; PENALTY: $16,110; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $8,055; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: R. R. DONNELLEY & SONS COMPANY; DOCKET NUMBER: 2021-1108-WQ-E; IDENTIFIER: RN100578483; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: paper product manufacturing facility; RULES

VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit (MSGP) Number TXRNEAW79, Part II, Section C, by failing to comply with the No Exposure Certification requirements of the MSGP; PENALTY: $675; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Smokers' Express Wine & Spirits, LLC dba Snappys Express Mart; DOCKET NUMBER: 2021-1023-PST-E; IDENTIFIER: RN101727022; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all recordkeeping requirements are met; 30 TAC §334.48(g)(1)(A)(ii) and (B) and TWC, §26.3475(c)(2), by failing to test the spill prevention equipment at least once every three years to ensure the equipment is liquid tight, and failing to inspect the overfill prevention equipment at least once every three years; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $5,063; ENFORCEMENT COORDINATOR: Sarah Smith, (512) 239-4495; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2020-1120-MWD-E; IDENTIFIERS: RN102674090 and RN105163000; LOCATION: Whitsett, Live Oak County; TYPE OF FACILITY: wastewater treatment facilities; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014767001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $9,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,500; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: Town of Ponder; DOCKET NUMBER: 2021-0921-MWD-E; IDENTIFIER: RN102739349; LOCATION: Ponder, Denton County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011287003, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $6,375; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2021-0771-PWS-E; IDENTIFIER: RN102682184; LOCATION: Somerville, Burleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: UNITED PARCEL SERVICE, INCORPORATED dba UPS San Angelo; DOCKET NUMBER: 2021-1124-PST-E; IDENTIFIER: RN101637452; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: fleet refueling; RULES VIOLATED: 30 TAC §334.48(d) and §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all installed spill and overfill prevention devices are maintained in good operating condition and inspected and serviced in accordance with the manufacturer's specifications; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-202201076
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 29, 2022

Enforcement Orders

A default order was adopted regarding Bowles Redi Mix, Inc., Docket No. 2019-0235-AIR-E on March 30, 2022, assessing $4,724 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Motiva Enterprises LLC, Docket No. 2019-1374-MLM-E on March 30, 2022, assessing $284,148 in administrative penalties with $56,829 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kleinwood Joint Powers Board, Docket No. 2020-0464-MWD-E on March 30, 2022, assessing $12,375 in administrative penalties with $2,475 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2020-0764-IWD-E on March 30, 2022, assessing $14,788 in administrative penalties with $2,957 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Bobby Kennedy and Lisa Kennedy, Docket No. 2020-0993-AGR-E on March 30, 2022, assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding K-C LEASE SERVICE, INC., Docket No. 2020-1363-WQ-E on March 30, 2022, assessing $30,563 in administrative penalties with $6,112 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2020-1377-AIR-E on March 30, 2022, assessing $11,175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforce-

ment Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding W.R. Grace & Co.- Conn., Docket No. 2020-1569-AIR-E on March 30, 2022, assessing $90,300 in administrative penalties with $18,060 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Possum Kingdom Water Supply Corporation, Docket No. 2021-0078-IWD-E on March 30, 2022, assessing $10,062 in administrative penalties with $2,012 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Horseshoe Lodges, LLC, Docket No. 2021-0471-PWS-E on March 30, 2022, assessing $6,750 in administrative penalties with $6,750 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake Padre Development Company, LLC, Docket No. 2021-0477-WQ-E on March 30, 2022, assessing $9,072 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WORLD FUEL SERVICES, INC., Docket No. 2021-0532-WQ-E on March 30, 2022, assessing $5,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OQ Chemicals Corporation, Docket No. 2021-0570-AIR-E on March 30, 2022, assessing $8,325 in administrative penalties with $1,665 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Basic Energy Services, Inc., Docket No. 2021-0598-PWS-E on March 30, 2022, assessing $5,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting America Ruiz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Friendswood Energy Genco, LLC, Docket No. 2021-0610-AIR-E on March 30, 2022, assessing $7,501 in administrative penalties with $1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Seminole, Docket No. 2021-0663-PWS-E on March 30, 2022, assessing $2,675 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting America Ruiz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Woodville Pellets, LLC, Docket No. 2021-0449-AIR-E on March 30, 2022, assessing $517,068 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202201091
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 30, 2022

Enforcement Orders

An agreed order was adopted regarding CAMP OLYMPIA INC, Docket No. 2020-0969-MWD-E on March 29, 2022, assessing $5,500 in administrative penalties with $1,100 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Knights Crossing, Ltd., Docket No. 2020-1553-EAQ-E on March 29, 2022, assessing $3,825 in administrative penalties with $765 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Parks and Wildlife Department, Docket No. 2021-0182-PWS-E on March 29, 2022, assessing $1,520 in administrative penalties with $304 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Marlin, Docket No. 2021-0201-PWS-E on March 29, 2022, assessing $6,615 in administrative penalties with $1,323 deferred. Information concerning any aspect of this order may be obtained by contacting Epi Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Greif, Inc., Docket No. 2021-0277-PWS-E on March 29, 2022, assessing $375 in administrative penalties with $75 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Matthews, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Magellan Processing, L.P., Docket No. 2021-0280-AIR-E on March 29, 2022, assessing $4,103 in administrative penalties with $820 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Formosa Plastics Corporation, Texas, Docket No. 2021-0347-AIR-E on March 29, 2022, assessing $7,500 in administrative penalties with $1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gilmer Cstore Investment LLC dba Rise N Run 11, Docket No. 2021-0393-PST-E on March 29, 2022, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Shoreacres, Docket No. 2021-0416-PWS-E on March 29, 2022, assessing $50 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NIROJ CORPORATION dba Whip In 113, Docket No. 2021-0446-PST-E on March 29, 2022, assessing $5,530 in administrative penalties with $1,106 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Riverside Special Utility District, Docket No. 2021-0472-PWS-E on March 29, 2022, assessing $750 in administrative penalties with $150 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Babar Inc dba Star Mini Mart, Docket No. 2021-0521-PST-E on March 29, 2022, assessing $4,388 in administrative penalties with $877 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding R.P. Land & Cattle, LLC, Docket No. 2021-0536-PWS-E on March 29, 2022, assessing $535 in administrative penalties with $107 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 1625 CmCM, LLC, Docket No. 2021-0545-PST-E on March 29, 2022, assessing $6,989 in administrative penalties with $1,397 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2021-0551-AIR-E on March 29, 2022, assessing $1,225 in administrative penalties with $245 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Transportation, Docket No. 2021-0602-PST-E on March 29, 2022, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LyondellBasell Acetyls, LLC, Docket No. 2021-0605-AIR-E on March 29, 2022, assessing $4,462 in administrative penalties with $892 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CITGO Refining and Chemicals Company L.P., Docket No. 2021-0678-AIR-E on March 29, 2022, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Weatherford U.S., L.P., Docket No. 2021-0679-IWD-E on March 29, 2022, assessing $5,062 in administrative penalties with $1,012 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Reena Moore, L.L.C. dba Yogis Exxon, Docket No. 2021-0686-PST-E on March 29, 2022, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding K & K Inc., Docket No. 2021-0691-PST-E on March 29, 2022, assessing $6,625 in administrative penalties with $1,325 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Saratoga Homes, Inc., Docket No. 2021-0708-WQ-E on March 29, 2022, assessing $6,175 in administrative penalties with $1,235 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORTHSIDE, INC. dba 7-Days Groceries, Docket No. 2021-0713-PST-E on March 29, 2022, assessing $3,494 in administrative penalties with $698 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KENDRICK OIL CO. dba Horseshoe 3, Docket No. 2021-0745-PST-E on March 29, 2022, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Port Comfort Power LLC, Docket No. 2021-0839-IWD-E on March 29, 2022, assessing $3,938 in administrative penalties with $787 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Freeport LNG Development, L.P., Docket No. 2021-0917-AIR-E on March 29, 2022, assessing

$6,000 in administrative penalties with $1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding ASGI Homes LLC, Docket No. 2021-1549-WQ-E on March 29, 2022, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Larry D Phillips, Docket No. 2021-1588-WOC-E on March 29, 2022, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding City of Sweetwater, Docket No. 2022-0022-WQ-E on March 29, 2022, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Hurtado Contstruction Company, Docket No. 2022-0050-WR-E on March 29, 2022, assessing $350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ashlyn Homes Inc, Docket No. 2022-0059-WQ-E on March 29, 2022, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202201093
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 30, 2022

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility; Registration Application No. 40328

Application. Stericycle, Inc., 802 Savage Lane, Corpus Christi, Texas 78408, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40328, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Stericycle - Corpus Christi, will be located at 802 Savage Lane, Corpus Christi, Texas 78408, in Nueces County. The Applicant is requesting authorization to transfer municipal solid waste that includes medical waste as defined in §326.3(23), non-hazardous pharmaceutical waste, trace chemotherapy waste, and confidential documents. The registration application is available for viewing and copying at La Retama Central Library located at 805 Comanche Street, Corpus Christi, Texas 78401, and may be viewed online at https://ardurra.com/insight/stericycle_corpus-christi- transfer-station-application-january-2022/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/1T4fee. For exact location, refer to application.

The TCEQ executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General

information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Stericycle, Inc. at the address stated above or by calling Mr. Mark Triplett at (361) 452-2884.

TRD-202201043
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2022

Notice of District Petition

Notice issued March 24, 2022

TCEQ Internal Control No. D-02282022-041; Grafted Investments, LLC (Petitioner) filed a petition for creation of Guadalupe County Municipal Utility District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code (TWC); 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District with the exception of Sigman Investments, LP; (3) the proposed District will contain approximately 256.188 acres located within Guadalupe County, Texas; and (4) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of Marion (City). Sigman Investments, LP consented to the District's creation by letter, dated February 15, 2020. On June 28, 2021, in accordance with Local Government Code Section 42.042 and TWC Section 54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. On July 12, 2021, the City Council voted affirmatively to refuse consent to the creation of, and inclusion of the land within the District. The Petitioner on July 13, 2021, submitted a petition to the City to provide water or sewer services to the District. On July 20, 2021, the City Council of the City determined by vote that it could not provide the requested services, would not again take up the matter, and that there would be no contract for services with Petitioner in accordance with Section 54.016(c) of the Texas Water Code. The 120-day period for reaching a mutually agreeable contract as established by TWC Section 54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to TWC Section 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the District. The District is within the water utility CCN of Green Valley SUD and proposes "by agreement" to contract water and wastewater services with Green Valley SUD. The petition further states that the purposes of and the work to be done by the District shall be the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District and the payment of organizational, operational and interest expenses during construction; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants and enterprises as shall be consistent with the purposes for which the District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $47,850,000 (including $26,000,000 for water, wastewater, and drainage plus $21,850,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202201036
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2022

Notice of Hearing on San Antonio Water System: SOAH Docket No. 582-22-1990; TCEQ Docket No. 2021-1391-WR; Water Use Permit No. 13098

APPLICATION.

San Antonio Water System, 2800 U.S. Highway 281, San Antonio, Texas 78212, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code (TWC) §11.042 and TCEQ Rules Title 30 Texas Administrative Code (TAC) §§295.1, *et seq.*

San Antonio Water System seeks a water use permit to authorize the use of the bed and banks of multiple tributaries of the San Antonio River and the San Antonio River, San Antonio River Basin and the

Guadalupe River, Guadalupe River Basin to convey 260,991 acre-feet of groundwater-based return flows per year for subsequent diversion and use for municipal, agricultural, industrial, mining, and instream purposes of use in Bexar, Calhoun, Goliad, Karnes, Refugio, Victoria and Wilson counties.

San Antonio Water System (SAWS) seeks authorization to use the bed and banks of the Medina River, Salado Creek, Comanche Creek, Leon Creek, Medio Creek, and the San Antonio River, San Antonio River Basin and the Guadalupe River, Guadalupe River Basin, to convey 260,991 acre-feet of groundwater-based return flows per year, for subsequent diversion from a reach on the Guadalupe River, for municipal, agricultural, industrial, mining, and instream purposes of use in Bexar, Calhoun, Goliad, Karnes, Refugio, Victoria, Wilson counties.

SAWS owns and operates four wastewater treatment plants:

A. Steven M. Clouse Water Recycling Center (WRC), authorized under Texas Pollution Discharge Elimination System (TPDES) Permit No. WQ0010137033 with a total discharge of 140,017 acre-feet per year; and

B. Leon Creek WRC, authorized under TPDES Permit No. WQ0010137003 with a total discharge of 51,526 acre-feet per year; and

C. Medio Creek WRC, authorized under TPDES Permit No. WQ0010137040 with a total discharge of 17,922 acre-feet per year; and

D. Salado Creek WRC, authorized under TPDES Permit No. WQ0010137008 with a total discharge of 51,526 acre-feet per year.

The return flows are discharged at the following points, located in Bexar County within the San Antonio River Basin, ZIP code 78205:

Discharge Point No. 1 (Steven M. Clouse WRC Outfall 001) is located at Latitude 29.235827° N, Longitude 98.416244° W on the Medina River; and

Discharge Point No. 2 (Steven M. Clouse WRC Outfall 002) is located at Latitude 29.461615° N, Longitude 98.468752° W on the San Antonio River; and

Discharge Point No. 3 (Steven M. Clouse WRC Outfall 003) is located at Latitude 29.446454° N, Longitude 98.480740° W on the San Antonio River; and

Discharge Point No. 4 (Steven M. Clouse WRC Outfall 004) is located at Latitude 29.484730° N, Longitude 98.416819° W on Salado Creek; and

Discharge Point No. 5 (Steven M. Clouse WRC Outfall 005) is located at Latitude 29.420978° N, Longitude 98.485352° W on the San Antonio River; and

Discharge Point No. 6 (Steven M. Clouse WRC Outfall 006) is located at Latitude 29.275560° N, Longitude 98.428978° W on the San Antonio River; and

Discharge Point No. 7 (Leon Creek WRC Outfall 001) is located at Latitude 29.275319° N, Longitude 98.513008° W on Comanche Creek; and

Discharge Point No. 8 (Medio Creek WRC Outfall 001) is located at Latitude 29.398847° N, Longitude 98.668031° W on Medio Creek; and

Discharge Point No. 9 (Salado Creek WRC Outfall 001) is located at Latitude 29.275560° N, Longitude 98.428978° W on the San Antonio River.

SAWS seeks to divert the discharged groundwater-based return flows from a reach on the Guadalupe River, Guadalupe River Basin, at a maximum combined diversion rate of 161,878 gpm (360.53 cfs), with the proposed upstream point of the reach being at Latitude 28.478432°N, Longitude 96.862858° W and the downstream point being at Latitude 28.447519° N and Longitude 96.785611° W in Calhoun County, ZIP code 77979.

Portions of the 260,991 acre-feet of groundwater-based return flows per year requested in the application were previously authorized under Certificate of Adjudication Nos. 19-4768 and 19-2162 and Water Use Permit No. 5705.

SAWS requests to account for and use those groundwater-based return flows, under Water Use Permit No. 13098, when those portions of the previously authorized return flows are not being diverted under those authorizations.

SAWS has provided and the Executive Director has approved the *San Antonio Water System Groundwater Based Effluent Water Balance Accounting Plan Water Use Permit Application No. 13098.*

The application and partial fees were received on December 30, 2013. Additional information and fees were received on July 8 and August 8, 2014, February 29 and March 29, 2016. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 9, 2016. Additional information was received on March 17 and March 24, 2021.

The Executive Director has prepared a draft permit, which, if granted, would include special conditions including, but not limited to maintaining an accounting plan and maintaining a measuring device. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - May 4, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 160 578 9211

Password: u5d7CV

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 578 9211

Password: 872526

Visit the SOAH website for registration at: http://www.soah.texas.gov/ or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 11, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

The applicant is automatically a party in this hearing. If anyone else wishes to be a party to the hearing, he or she must attend the hearing and show how he or she would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and any person may request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: March 25, 2022

TRD-202201069
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 25, 2022

Notice of Public Meeting for a New Municipal Solid Waste Permit: Proposed Permit No. 2411

Application. Transfer Station Solutions, LLC, P.O. Box 6427, Paris, Lamar County, Texas 75461, a waste management company, has applied to the Texas Commission on Environmental Quality (TCEQ) requesting authorization for a new Type V municipal solid waste transfer station. The facility is proposed to be located at 3491 Highway 24, Campbell, 75422 in Hunt County, Texas. The TCEQ received this application on August 18, 2021. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/11KmuD. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and preliminary decision on the application. **Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.**

Public Comment/Public Meeting. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the application, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the application. The executive director is not required to file a response to comments.

The Public Meeting is to be held:

Thursday, April 28, 2022 at 7:00 p.m.

The Landmark

2920 Lee Street

Greenville, Texas 75401

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the application or the process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at www.tceq.texas.gov.

The permit application is available for viewing and copying at the Commerce Public Library, 1210 Park Street, Commerce, Hunt County, Texas 75428, and may be viewed online at https://www.scsengineers.com/state/hwy-24-transfer-station/hwy-24-transfer-station-permit-application. Further information may also be obtained from Transfer Station Solutions, LLC at the address stated above or by calling Mr. Josh Bray, President at (903) 517-6268.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issued Date: March 25, 2022

TRD-202201047
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 25, 2022

Notice of Water Quality Application

The following notice was issued on March 22, 2022

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Air Products Industrial Gas LLC, which proposes to operate Air Products Texas City Facility, an anhydrous ammonia production plant, has applied for a minor amendment to redefine the term Utility Wastewater to include hydrostatic test water (from uncontaminated new vessels using non-hyperchlorinated water), system flushing water, cooling tower filter backwash, demineralization unit filter backwash, and steam condensate, and add diffuser at the end of Outfall 001. The draft permit authorizes the discharge of utility wastewater and stormwater at a daily

average flow not to exceed 2,200,000 gallons per day via Outfall 001. The facility is located 435 5th Street South, in Texas City, Galveston County, Texas 77590.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202201044
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2022

Notice of Water Quality Application

The following notice was issued on March 29, 2022

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Kuiper Dairy, LLC has applied for a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003199000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to add a freestall barn to the production area and divert the rainfall on the freestall barn outside the drainage area of the retention control structure (RCS). The RCS design calculations for RCS #1 were revised to account for the diverted roof area, which decreased the RCS required capacity from 68.72 to 66.78 ac-ft. The authorized maximum capacity of 5,000 head, of which 3,100 head are milking, and the total land application area of 395 acres will not change. The facility is located at 5040 County Road 209, Hico in Erath County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202201085
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 30, 2022

Notice of Water Rights Application

Notice Issued March 25, 2022

APPLICATION NO. 14-1330D; Pursuant to a five-year lease agreement, Quicksand Partners, LTD., 2305 Pulliam Street, San Angelo, Texas 76905, Applicant, seeks to amend Certificate of Adjudication No. 14-1330, as amended, to authorize the diversion of 500 acre-feet of water authorized in Certificate of Adjudication No. 14-1338, from the diversion point authorized in Certificate of Adjudication No. 14-1330, to add a place of use for agricultural purposes in Tom Green County and to add recreational purposes of use to the 500 acre-feet of water. The application does not request a new appropriation of water. More information on the application and how to participate in the permitting process is given below. The application was received on January 4, 2021. Additional information and fees were received on April 2 and 3, and June 14, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 22, 2021.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, streamflow restrictions and maintenance of the lease agreement. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 12, 2022. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by April 12, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by April 12, 2022.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 1330 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202201048
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 25, 2022

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Notice of Water Rights Application

Notice Issued March 25, 2022

APPLICATION NO. 13762; MRSS Partners, LTD, 12651 Briar Forest Drive, Houston, Texas 77077, (Permittee/Applicant) seeks authorization to maintain an existing dam and reservoir on East Fork Crystal Creek, San Jacinto River Basin, impounding 43 acre-feet of water for recreational purposes in Montgomery County and to maintain the reservoir with groundwater from the Chicot Aquifer. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on April 26, 2021. Additional information and fees were received on June 14 and 22, 2021 and January 18 and 20, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 2, 2021. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to the maintaining an alternate source. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 12, 2022. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by April 12, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by April 12, 2022.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering WRPERM 13762 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at http://www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202201053
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 25, 2022

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Texas Health and Human Services Commission

Public Notice - Community Living Assistance and Support Services (CLASS) Program

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Community Living Assistance and Support Services (CLASS) Program. HHSC administers the CLASS Program under the authority of 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2024. The proposed effective date for the amendment is August 31, 2022.

The request proposes to make the following changes:

Appendix B: Participant Access and Eligibility

HHSC increased the unduplicated number of participants (Factor C) and point-in-time (PIT) numbers for waiver years 3, 4, and 5.

Appendix C: Participant Services

HHSC clarified that supported employment is not available to individuals under a program funded under Section 110 of the Rehabilitation Act of 1973.

Appendix G: Participant Safeguards

HHSC removed the requirement for financial management services agencies and consumer directed services employers to attend training in person and will permanently allow them to attend the training online.

Appendix J: Cost Neutrality Demonstration

HHSC revised the unduplicated number of participants (Factor C) and PIT as well as the calculations for the overall projected cost of waiver services (Factor D) for waiver years 3, 4, and 5.

The CLASS waiver program provides community-based services and supports to eligible individuals as an alternative to an intermediate care facility for individuals with intellectual disabilities. CLASS waiver services are intended to enhance an individual's integration into the community, maintain or improve the individual's independent functioning and quality of life, and prevent the individual's admission to an institution. Services and supports supplement, rather than replace, existing informal or formal supports and resources.

To obtain a free copy of the proposed request to amend the waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email at the addresses and numbers below. Comments about the proposed waiver amendment request must be submitted to HHSC by May 9, 2022.

U.S. Mail:

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules, and Committees

John H. Winters Building, East Tower

701 W. 51st Street

Mail Code: H-310

Austin, Texas 78751

Telephone:

(512) 438-4321

Fax:

(512) 323-1905, Attention: Basundhara Raychaudhuri

Email:

TX_Medicaid_Waivers@hhsc.state.tx.us

The HHSC local offices will post this notice for 30 days.

The complete request to amend the waiver can be found online on the HHSC website at https://hhs.texas.gov/laws-regulations/policies-rules/waivers.

TRD-202201089
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 30, 2022

Public Notice - DBMD Waiver Application

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Deaf Blind with Multiple Disabilities (DBMD) Program. HHSC administers the DBMD Program under the authority of Section 1915(c)of the Social Security Act. CMS has approved the DBMD waiver application through February 28, 2023. The proposed effective date for the amendment is September 1, 2022.

The request proposes to make the following changes:

Main Attachment #1: Transition Plan

HHSC included a transition plan to address the discontinuation of day habilitation after waiver year (WY) 5 and the implementation of individualized skills and socialization, a new service, to comply with the Home and Community-Based Services (HCBS) settings requirements.

Appendix C

HHSC added individualized skills and socialization and the service provider qualifications for the service.

HHSC clarified that supported employment is not available to individuals under a program funded under Section 110 of the Rehabilitation Act of 1973.

Appendix J

HHSC added individualized skills and socialization to the waiver service coverage charts and updated the projected utilization for day habilitation and individualized skills and socialization.

The DBMD Program serves individuals with legal blindness, deafness, or a condition that leads to deaf blindness, and at least one additional disability that limits functional abilities. The program serves individuals in the community who would otherwise require care in an intermediate care facility for individuals with intellectual disability or a related condition.

If you want to obtain a free copy of the proposed amendment or if you have questions, need additional information, or want to submit comments regarding this amendment, you may contact Basundhara Raychaudhuri by U.S. mail, telephone, fax or email at the address and numbers listed below. Comments about the proposed waiver amendment request must be submitted to HHSC by May 9,2022.

U.S. Mail

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules, and Committees

John H. Winters Building, East Tower

701 W. 51st Street

Mail Code: H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax (512) 323-1905, Attention: Basundhara Raychaudhuri

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

The HHSC local offices will post this notice for 30 days.

The complete request to amend the waiver can be found online on the HHSC website at

https://hhs.texas.gov/laws-regulations/policies-rules/waivers.

TRD-202201071
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 28, 2022

Public Notice - Home and Community Based Services

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Home and Community-based Services (HCS) program. HHSC administers the HCS Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the HCS waiver application through August 31, 2023. The proposed effective date for this amendment is August 31, 2022.

This amendment request proposes to make the following changes:

Main Attachment #1 Transition Plan

HHSC included a transition plan to address the discontinuation of day habilitation during waiver year 5 and the implementation of individualized skills and socialization, a new service, to comply with the Home and Community-Based Services (HCBS) settings requirements.

Appendix B

HHSC updated waiver years 4 and 5 to reflect an increase in the Point-in-Time (PIT) and unduplicated participants (Factor C).

Appendix C

HHSC added individualized skills and socialization and the service provider qualifications for the service.

HHSC clarified that the amount allowed for repairs of minor home modifications will not count toward the $7,500 lifetime limit and is limited to $300 per service plan year per individual.

HHSC removed the following language from the service scope for day habilitation - "Day habilitation does not include services funded under

section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.)."

HHSC clarified that supported employment is not available to individuals under a program funded under section 110 of the Rehabilitation Act of 1973.

Appendix D and Appendix G

HHSC clarified the settings for which HHSC conducts annual unannounced visits and that HHSC can conduct unannounced surveys for individuals in host home/companion care settings at any time.

Appendix I

HHSC changed the term "HHSC Rate Analysis" to "HHSC Provider Finance Department" and provided clarifying language for the individualized skills and socialization services projected costs.

Appendix J

HHSC revised the unduplicated number of participants (Factor C) and PIT calculations for the overall projected cost of waiver services (Factor D) and the overall projected cost of other Medicaid services furnished to waiver participants (D Prime (D')) for the same waiver years. The updated projections in appendix J also include the addition of the individualized skills and socialization service and updated projections to discontinue day habilitation after waiver year (WY) 5 to comply with the HCBS settings requirements.

The HCS waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes, in the home of a family member, or another community setting such as a three-person or four-person residence operated by an HCS program provider. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources. Services in the HCS waiver program include day habilitation, respite, supported employment, adaptive aids, audiology, occupational therapy, physical therapy, prescribed drugs, speech and language pathology, financial management services, support consultation, behavioral support, cognitive rehabilitation therapy, dental treatment, dietary services, employment assistance, minor home modifications, nursing, residential assistance, social work, supporting home living, and transition assistance services.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy of the proposed waiver amendment may also be obtained online on the HHSC website at:

https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers

Comments about the proposed waiver amendment must be submitted to HHSC by May 9, 2022.

The HHSC local offices of social services will post this notice for 30 days.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street

Mail Code: H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Basundhara Raychaudhuri, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202201075
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 29, 2022

Public Notice - Texas Healthcare Transformation and Quality Improvement Program (THTQIP) Waiver

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The current waiver is approved through September 2030. The proposed effective date for this amendment is September 22, 2022.

In response to House Bill 133, 87th Legislature, Regular Session, 2021, an amendment to the THTQIP 1115 waiver is needed to provide an additional four months of Medicaid eligibility to women receiving Medicaid at the time they deliver or experience an involuntary miscarriage, for a total of six months postpartum coverage.

This extension of postpartum coverage will have long-term benefits of improving continuity of care across a woman's life cycle, increasing access to preventive health care, and positively affecting postpartum health outcomes and the outcomes of future pregnancies. This is consistent with the 1115 demonstration waiver goals of expanding risk-based managed care to new populations and services and improving outcomes.

Proposed Changes

Currently, pregnant women who are determined eligible for Medicaid are considered eligible until the end of the month in which their 60-day postpartum period ends. This waiver will not create a new eligibility category but will extend eligibility for pregnant women for an additional four months beyond the federally required postpartum period. This additional four months of eligibility will be provided to all women whose pregnancies end in a delivery or an involuntary miscarriage through the last day of the month in which the six-month postpartum period ends. If a woman's pregnancy does not end in a delivery or an involuntary miscarriage, the woman will receive the postpartum coverage required by 42 CFR § 435.170(b) and (c).

Requested Waivers

HHSC is requesting to waive § 1905(n) of the Social Security Act (Act) and 42 CFR § 435.4 to the extent necessary to allow the state to redefine "qualified pregnant woman or child" in the Act and "pregnant woman" in the CFR to change the postpartum period from 60 days to six months following delivery or involuntary miscarriage.

HHSC is requesting to waive 42 CFR § 440.210(a)(3) to the extent necessary to change the postpartum period from 60 days to six months following delivery or involuntary miscarriage.

HHSC is requesting to waive § 1902(e)(5) of the Act and 42 CFR § 435.170(b) and (c) to the extent necessary to allow the state to provide six months of extended and continuous eligibility following delivery or involuntary miscarriage.

HHSC is requesting to waive § 1902(a)(10)(B) of the Act, 42 CFR § 440.240 and 42 CFR § 440.250(p), related to comparability of services, to the extent necessary, as determined by CMS, allow the state to provide the additional four months of eligibility only to women whose pregnancies end in delivery or involuntary miscarriage.

HHSC is requesting to waive the requirement to conduct a redetermination of eligibility once every 12 months, as required by 42 CFR § 435.916 (a). With the additional four months of coverage, some women may receive Medicaid coverage for more than 12 months without an eligibility determination.

Financial Analysis

There is minimal impact to budget neutrality due to additional months of postpartum coverage for pregnant women on Medicaid, as this population is already included with existing state plan benefits. The additional months of coverage will add member months to the budget neutrality model due to a longer length of stay, however the budget neutrality model uses the same caseload for both the with-waiver and without-waiver calculations.

Evaluation Design

The CMS-approved 1115 evaluation design focusing on demonstration years 7-11 culminates in a Draft Evaluation Report due March 31, 2024, as required by Special Term and Condition (STC) 86. The amendment may influence evaluation measures on overall Demonstration costs, but potential impacts will be negligible. As a result, the overall evaluation findings will not be meaningfully impacted by the amendment.

HHSC decided not to include any evaluation questions, hypotheses, or measures on the postpartum coverage extension amendment in the revised 1115 evaluation design focusing on demonstration years 10-19, as required by STC 82. However, the state will direct the external evaluator to interpret and present pertinent findings within the context of this amendment as necessary.

Enrollment, Cost Sharing, and Service Delivery

Monthly enrollment for Medicaid for Pregnant Women will increase because women will remain eligible for an additional four months. Prior to the public health emergency, the average monthly enrollment for women determined eligible for Medicaid for Pregnant Women was 137,493 (March 2019 - February 2020). This amendment will not impose beneficiary cost sharing.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments regarding this amendment by May 9, 2022, by contacting Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail:

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules and Committees

701 W. 51st Street

Mail Code: H310

Austin, Texas 78751

Email:

TX_Medicaid_Waivers@hhs.texas.gov

Telephone:

(512) 438-4321

Fax:

(512) 323-1905

TRD-202201083
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 30, 2022

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for Texas Heritage Insurance Company, a domestic fire and/or casualty company, to change its name to Germania Property & Casualty Insurance Company. The home office is in Brenham, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202201090
James Person
General Counsel
Texas Department of Insurance
Filed: March 30, 2022

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Texas Department of Licensing and Regulation

Texas Accessibility Standards

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure Texas Accessibility Standards is not included in the print version of the Texas Register. The figure is available in the on-line version of the April 8, 2022, issue of the Texas Register.)

The Texas Department of Licensing and Regulation is accepting comments regarding the proposed amendment of the Texas Accessibility Standards (TAS). Comments on the proposed amendments may be submitted electronically on the Department's website at https://ga.tdlr.texas.gov:1443/form/gcerules; by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

TRD-202201092
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Filed: March 30, 2022

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Texas Lottery Commission

Scratch Ticket Game Number 2434 "MILLION DOLLAR LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2434 is "MILLION DOLLAR LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2434 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2434.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are:

THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BICYCLE SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE BUTTERFLY SYMBOL, THE CACTUS SYMBOL, THE CARDINAL SYMBOL, THE CHERRIES SYMBOL, THE CHILE PEPPER SYMBOL, THE CORN SYMBOL, THE COVERED WAGON SYMBOL, THE COW SYMBOL, THE COWBOY SYMBOL, THE COWBOY HAT SYMBOL, THE DESERT SYMBOL, THE FIRE SYMBOL, THE FOOTBALL SYMBOL, THE GEM SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONE STAR SYMBOL, THE MARACAS SYMBOL, THE MOCKINGBIRD SYMBOL, THE MOONRISE SYMBOL, THE MORTAR PESTLE SYMBOL, THE NEWSPAPER SYMBOL, THE OIL RIG SYMBOL, THE PECAN TREE SYMBOL, THE PIÑATA SYMBOL, THE RACE CAR SYMBOL, THE RATTLESNAKE SYMBOL, THE ROADRUNNER SYMBOL, THE SADDLE SYMBOL, THE SHIP SYMBOL, THE SHOES SYMBOL, THE SOCCERBALL SYMBOL, THE SPEAR SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, CHECK SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, MONEYBAG SYMBOL, STAR SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, COINS SYMBOL, STACK OF BILLS SYMBOL, VAULT SYMBOL, $10.00, $20.00, $30.00, $40.00, $50.00, $100, $200, $500, $1,000, $5,000, $20,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2434 - 1.2D

PLAY SYMBOL	CAPTION
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BICYCLE SYMBOL	THE BICYCLE
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR
THE BUTTERFLY SYMBOL	THEBUTTERFLY
THE CACTUS SYMBOL	THE CACTUS
THE CARDINAL SYMBOL	THECARDINAL
THE CHERRIES SYMBOL	THECHERRIES
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE CORN SYMBOL	THE CORN
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE COW SYMBOL	THE COW
THE COWBOY SYMBOL	THECOWBOY
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE DESERT SYMBOL	THE DESERT
THE FIRE SYMBOL	THE FIRE
THE FOOTBALL SYMBOL	THEFOOTBALL
THE GEM SYMBOL	THE GEM
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONE STAR SYMBOL	THELONESTAR
THE MARACAS SYMBOL	THEMARACAS
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MOONRISE SYMBOL	THE MOONRISE

THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE OIL RIG SYMBOL	THEOILRIG
THE PECAN TREE SYMBOL	THEPECANTREE
THE PIÑATA SYMBOL	THE PIÑATA
THE RACE CAR SYMBOL	THERACECAR
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE SADDLE SYMBOL	THESADDLE
THE SHIP SYMBOL	THE SHIP
THE SHOES SYMBOL	THE SHOES
THE SOCCERBALL SYMBOL	THESOCCERBALL
THE SPEAR SYMBOL	THE SPEAR
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
CHECK SYMBOL	CHECK
GOLD BAR SYMBOL	GOLDBAR
HEART SYMBOL	HEART
MONEYBAG SYMBOL	MONEYBAG
STAR SYMBOL	STAR
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
COINS SYMBOL	COINS
STACK OF BILLS SYMBOL	STACKOFBILLS
VAULT SYMBOL	VAULT
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$40.00	FRTY$

$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$20,000	20TH
$1,000,000	TPPZ

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2434), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2434-0000001-001.

H. Pack - A Pack of the "MILLION DOLLAR LOTERIA" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MILLION DOLLAR LOTERIA" Scratch Ticket Game No. 2434.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly 78 (seventy-eight) Play Symbols. A prize winner in the "MILLION DOLLAR LOTERIA Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAYBOARD 1: 1) The player completely scratches the CALLER'S CARD area to reveal 27 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAYBOARDS 2: The player scratches ONLY the symbols on each PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals all 4 symbols in a column, the player wins the PRIZE for that column. PLAY AREA 3 (BONUS GAMES): The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. PLAY AREA 4 (BONUS): If the player reveals 2 matching symbols in the BONUS $100, the player wins $100. If the player reveals 2 matching symbols in the BONUS $200, the player wins $200. TABLA DE JUEGO 1: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 27 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa horizontal, vertical o diagonal, el jugador gana el premio para esa línea. TABLAS DE JUEGO 2: El jugador SOLAMENTE raspa los símbolos en cada de las TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados in la CARTA DEL GRITÓN. Si el jugador revela todos los 4 símbolos en una columna, el jugador gana el PREMIO para esa columna. ÃREA DE JUEGO 3 (JUEGOS DE BONO): El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. ÃREA DE JUEGO 4 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO $100, el jugador gana $100. Si el jugador revela 2 símbolos iguales en el área de BONO $200, el jugador gana $200. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 78 (seventy-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 78 (seventy-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 78 (seventy-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 78 (seventy-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fourteen (14) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARD 1/TABLA DE JUEGO 1: No matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD 1/TABLA DE JUEGO 1: At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD 1/TABLA DE JUEGO 1 play area.

E. PLAYBOARD 1/TABLA DE JUEGO 1: CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will have a random distribution on the Ticket, unless restricted by other parameters, play action or prize structure.

F. PLAYBOARD 1/TABLA DE JUEGO 1: No matching Play Symbols are allowed on the same PLAYBOARD 1/TABLA DE JUEGO 1 play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of $20.00, $30.00, $40.00, $50.00, $100, $150, $200, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $40.00, $50.00, $100, $150, $200, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of $1,000, $5,000, $20,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via

mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MILLION DOLLAR LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MILLION DOLLAR LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 16,800,000 Scratch Tickets in Scratch Ticket Game No. 2434. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2434 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20	2,016,000	8.33
$30	1,176,000	14.29
$40	336,000	50.00
$50	672,000	25.00
$100	660,800	25.42
$150	134,400	125.00
$200	88,060	190.78
$250	43,680	384.62
$500	7,840	2,142.86
$1,000	1,120	15,000.00
$5,000	224	75,000.00
$20,000	28	600,000.00
$1,000,000	8	2,100,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of
actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.27. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2434 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2434, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202201082

Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 29, 2022

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Texas Public Finance Authority

Texas Natural Gas Securitization Finance Corporation Request for Qualifications for Corporate Counsel

RFQ ISSUE DATE: March 28, 2022

RESPONSE DUE: April 13, 2022, 3:00 p.m. CT

Please see SCHEDULE OF EVENTS and TIME SCHEDULE AND SUBMISSION DIRECTIONS.

PURPOSE

The Texas Natural Gas Securitization Finance Corporation (the "Corporation") solicits responses to this Request for Qualifications ("RFQ")

from law firms interested in providing corporate counsel services to the Corporation. Based on consideration of the responses to this RFQ, the Corporation's Board of Directors (the "Board") may select one or more firms with which to contract for all corporate counsel matters. It is anticipated that a contract resulting from this RFQ will begin immediately and run through a date two years after the final maturity date of the Bonds.

BACKGROUND

The Texas Public Finance Authority ("TPFA") is a public authority and body politic and corporate created in 1983 by an act of the Texas Legislature to provide financing for the construction or acquisition of facilities for State agencies. Pursuant to Texas Government Code, Chapter 1232 (TPFA's enabling law), and Chapters 1401 and 1403, the TPFA issues bonds for designated State agencies.

On February 12, 2021, Governor Greg Abbott declared a state of disaster for all Texas counties in response to the unprecedented cold winter weather event that began in Texas on Thursday, February 11, 2021 ("Winter Storm Uri"). During Winter Storm Uri, the supply of natural gas was reduced while demand skyrocketed. As a result, gas utility local distribution companies ("LDCs") incurred extraordinary costs for natural gas while continuing to provide the necessary gas supply to customers using the gas to heat homes and businesses. LDCs are authorized to directly pass-through gas costs, without a markup, to customers.

To mitigate the effect of the extraordinarily high gas costs on customers, the Texas Legislature enacted House Bill 1520, 87th Legislature, R.S., 2021, ("HB 1520"), authorizing a securitization financing to provide certain LDC customers with rate relief by extending the period over which the extraordinarily high gas costs related to Winter Storm Uri will be billed to customers. Pursuant to HB 1520, the TPFA and the Railroad Commission of Texas ("RRC") are directed to work together to issue customer rate-relief bonds, the proceeds of which would be utilized by participating gas utilities to pay the extraordinary cost of natural gas due to high demand during Winter Storm Uri.

On November 10, 2021, the RRC adopted a Regulatory Asset Determination Order pursuant to HB 1520, certifying the amount of Winter Storm Uri related natural gas costs eligible for securitization. On February 8, 2022, the RRC adopted a Financing Order which requests that the TPFA direct the Corporation to issue Customer Rate Relief Bonds (the "Bonds") in accordance with the terms of HB 1520 and the Financing Order.

The total regulatory asset amount for the companies is approximately $3.4 billion. Copies of the Regulatory Asset Determination Order and the Financing Order adopted by the RRC, along with other documents submitted during the RRC's administrative hearing on this matter, can be found on the RRC's website at https://rrctx.force.com/s/case/500t000000oPYFYAA4/detail.

To facilitate the proposed securitization and pursuant to HB 1520, the TPFA incorporated the Texas Natural Gas Securitization Finance Corporation as a special purpose, bankruptcy-remote bond financing entity for the purpose of issuing the Bonds. Per HB 1520, ownership of the Customer Rate Relief Property will vest with the Corporation *ab initio.* The Corporation is a duly constituted public authority and instrumentality of the State of Texas and a non-profit corporation organized under and governed by the Texas Business Organizations Code. The Bonds will be limited obligations of the Corporation payable solely from Customer Rate Relief Property and any other money pledged, by the Corporation, to the payment of Bonds and will not be debt of the State of Texas, the RRC, the TPFA or any gas utility.

THE CORPORATION

The Corporation was created on November 29, 2021 by the Texas Public Finance Authority pursuant to HB 1520.

The Corporation is governed by a three-member Board of Directors, appointed by the governing board of the TPFA to two-year terms. The current members of the Corporation Board are: Billy M. Atkinson, Jr., Chair; Brendan Scher, Vice Chair; and Jay A. Riskind, Secretary.

The Corporation has no staff. Currently, the registered agent for the Corporation is Lee Deviney, the Executive Director of the TPFA.

THE TEXAS PUBLIC FINANCE AUTHORITY

The Texas Public Finance Authority was created in 1983 by the 68th Legislature for the purpose of issuing general obligation bonds and revenue bonds for and on behalf of the State of Texas for specific purposes expressly authorized by law. In addition to financing the construction of facilities, the TPFA issues debt obligations for non-construction related financings for Texas state agencies such as the Cancer Prevention and Research Institute of Texas and the Texas Workforce Commission, as well as issuing debt obligations on behalf of the Texas Windstorm Insurance Association.

The TPFA is governed by a seven-member Board of Directors, appointed by the Governor with the advice and consent of the Senate for six-year terms. The current members of the TPFA Board are: Billy M. Atkinson, Jr., Chair; Ramon Manning, Vice Chair; Jay A. Riskind, Secretary; Larry G. Holt; Shanda Perkins; Brendan Scher; and Ben Streusand.

The TPFA operates with a staff of 14 employees, headed by an Executive Director.

PROPOSED SCOPE OF SERVICES

Responses to this RFQ should be based upon performance of the following functions for and on behalf of the Corporation:

(1) Advising the Corporation Board on corporate governance matters.

(2) Advising the Corporation Board on risk mitigation.

(3) Advising the Corporation Board on matters related to the issuance of requests for proposals relating to services necessary to issue and administer the Bonds, as well as the review and evaluation of responses to such requests for proposals.

(4) Reviewing and making recommendations on proposed contracts with service providers.

(5) Advising the Corporation Board on matters related to compliance with applicable corporate regulatory requirements and ethics guidelines.

(6) Serving as secretary and parliamentarian for the Corporation Board, including the maintenance of all corporate records.

(7) Reviewing all transaction documents relating to the sale and issuance of the Bonds.

(8) Working cooperatively with the TPFA's staff and general counsel, the Corporation's financial advisor, the Corporation's bond counsel and the Corporation's disclosure counsel in all matters relating to the sale and issuance of the Bonds.

(9) Representing the Corporation, as directed by the Board, in any litigation involving the enforcement of the Corporation's property rights to the Customer Rate Relief Property created pursuant to HB 1520, including representing the Corporation in any matter filed in federal bankruptcy court. This function could be performed through retaining and supervising co-counsel specializing in bankruptcy matters.

(10) Provide for the representation, either directly or through the retention and/or supervision of co-counsel, in any other litigation matters involving the Corporation as directed by the Board.

(11) Preparing any corporate filings required by state or federal tax law.

(12) Providing assistance on legislative matters affecting the Corporation.

(13) Attending all meetings of the Corporation Board

It is contemplated that the scope of services would not include the following functions:

(A) Matters typically handled by a bond counsel in a municipal financing transaction, such as the preparation of financing documents and disclosure documents; however, corporate counsel may be asked to review and comment on such documents and issue a corporate counsel opinion on due authorization of such documents by the Corporation.

(B) Providing advice and counsel on post-issuance compliance with securities and tax law related to the issuance of the Bonds.

SCHEDULE OF EVENTS

The Corporation anticipates that the Corporate Counsel RFQ process will proceed in accordance with the following schedule:

March 28, 2022 - RFQ Issued

April 4, 2022 - Deadline for submission of written questions, by email (12:00 Noon CT)

April 7, 2022 - The Corporation will post responses to written questions on the TPFA's website no later than 5:00 p.m. CT

April 13, 2022 - **DEADLINE FOR SUBMISSION OF RESPONSES** (3:00 p.m. CT)

To be determined - Applicant Interviews

Board selection - Corporation Board meeting (date to be determined)

The Corporation reserves the right to change this schedule. Notice of any changes will be posted on the TPFA's website at http://www.tpfa.texas.gov/rfp.aspx.

FORM OF RESPONSE

1. **Representation Strategy**

Based on your firm's understanding of the Corporation's statutory objectives and considering the proposed scope of services described above, what is your firm's view as to the nature and scope of legal services that would be required from a corporate counsel in order for the Corporation to fulfill its statutory mandate. Further, specifically identify any potential risks to the Corporation, and to the members of the Board, related to the issuance of the Bonds. How would your firm mitigate those risks?

2. **Overview of the Firm**

Provide a brief description of your firm, including the total number of attorneys and employees, the number of attorneys practicing in fields related to your representation strategy indicated in your response to item 1 *supra.* Also provide the number of years the firm has been engaged in related work in Texas and indicate whether you have an Austin office staffed with attorneys who will assist with the proposed representation. Explain how your firm is organized and how its resources will be applied to representation of the Corporation.

3. **Qualifications**

A. Please detail your firm's qualifications to represent the Corporation as corporate counsel. Include detailed examples of your experience in representing other comparable entities as either corporate or issuer's counsel. Also, please describe your familiarity with Texas municipal bond issuances.

B. In a separate section of your response, concisely explain why your firm should be selected to serve as corporate counsel for the Corporation.

4. **Resumes**

Provide the resume of each attorney who would be assigned to serve the Corporation, specifically indicating the proposed role of each individual and their primary office location. The resumes must clearly specify the number of years the attorney has been licensed to practice law in Texas, as well as any other jurisdictions, and the number of years of experience in representing corporate entities. Further, identify the attorney that would be assigned as the primary contact for the Corporation. In addition, provide a separate listing of those attorneys who you would identify as special or *ad hoc* resources potentially assignable to the Corporation's work, along with their resumes.

5. **Proposed Fee Structure**

The Corporation currently has no funds available to pay expenses. The Corporation's initial expenses are expected to be paid from bond proceeds following the sale and issuance of the Bonds. Therefore, the initial representation of the Corporation would have to be done on a contingent fee basis pending the issuance of the Bonds. With that understanding, please provide a discussion of your proposed fee structure, including whether you would propose a flat fee or hourly billing or a combination. Provide your view as to which services could best be provided on a flat fee basis. See the "Contract Formation and Contract Administration" section *infra* for a discussion of the contingency related to payment of fees under the contract.

6. **Conflicts of Interest**

A. Please disclose any actual or potential conflicts of interest that could be created by the firm's representation of the Corporation. In addition, identify each matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Corporation, the TPFA, the RRC, or the State of Texas or any of its other boards, agencies, commissions, universities, or elected or appointed officials.

B. Please disclose any current or prior representation of the eight gas utilities, or affiliated entities, that will be participating in the HB 1520 securitization, specifically: Atmos Energy Corp.; Bluebonnet Natural Gas, LLC; CenterPoint Energy Resources Corp.; Corix Utilities (Texas), Inc.; EPCOR Gas Texas, Inc.; SiEnergy, LP; Texas Gas Service Company; and Universal Natural Gas, Inc. (UniGas).

7. **Historically Underutilized Businesses**

The Corporation will make a good faith effort to include participation of Historically Underutilized Business ("HUB") firms in its contracts. A HUB is a for profit business that meets the requirements of Texas Government Code §2161.001(2) and 34 TAC §20.282(11). Provide a statement as to whether your firm is currently certified as a HUB pursuant to Texas Government Code §2161.061 and Subchapter D of 34 TAC Chapter 20 and if applicable attach a copy of your current HUB certificate as an appendix to your firm's response. (For further information on the State's HUB program, please refer to https://comptroller.texas.gov/purchasing/vendor/hub/.) If your firm possesses a substantially similar certification from another jurisdiction, attach a copy of that certificate as an appendix.

8. **References**

Please provide names, addresses, and phone numbers of three references.

9. **Affirmations**

In your response, please confirm that your firm presently does not, and through the term of contemplated engagement, will not, (a) boycott Israel, (b) boycott energy companies, (c) have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or (d) unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran (or any federal sanctions regime relating to a foreign terrorist organization), appear on a list of scrutinized companies prepared and maintained by the Texas Comptroller of Public Accounts, all within the meaning and requirements of applicable provisions of the Texas Government Code. Any engagement agreement signed as a result of this RFQ will include verifications to that effect.

RESPONSE MODIFICATION

Any response to this RFQ may be modified or withdrawn at any time prior to the response due date. No changes will be allowed after the expiration of the response due date. The Corporation reserves the right to make amendments to this RFQ by giving written notice to all firms to which it has mailed this RFQ, whether by US Postal Service or electronic mail, and by posting notice thereof on the TPFA's website at http://www.tpfa.texas.gov/rfp.aspx.

TIME SCHEDULE AND SUBMISSION DIRECTIONS

Responses are due no later than **3:00 p.m. (CT) on April 13, 2022, at the offices of the TPFA.** Please submit one bound hard copy of the firm's response to this RFQ, signed by an authorized representative of the firm, ***and*** one electronic copy that is both searchable and unprotected on a flash drive, each of which should be clearly labeled, to:

Texas Natural Gas Securitization Finance Corporation

c/o Kevin Van Oort

General Counsel

Texas Public Finance Authority

Delivery Address:

300 W. 15th St., Room 411

Austin, Texas 78701

-OR-

Mailing Address:

P.O. Box 12906

Austin, Texas 78711-2906

Clearly mark the transmittal as "RESPONSE TO RFQ FOR CORPORATE COUNSEL." All responses become the property of the Corporation. Responses must set forth accurate and complete information as required by this RFQ. Oral instructions or offers will not be considered. **Contact with members of the Corporation Board or the TPFA Board regarding this RFQ is prohibited and will result in the disqualification of your firm from consideration.**

Any questions regarding this RFQ should be submitted by electronic mail to RFQ@tpfa.texas.gov by **12:00 p.m. (Noon) on April 4, 2022.** Questions submitted by that deadline and the Corporation's responses will be posted on the TPFA's website at http://www.tpfa.texas.gov/rfp.aspx by **5:00 p.m., April 7, 2022.** Questions submitted after the submission deadline will not be answered.

CONTRACT FORMATION AND CONTRACT ADMINISTRATION INFORMATION

The Corporation reserves the right to reject any and all responses to this RFQ and to cancel this RFQ if it is deemed in the best interest of the Corporation to do so. Issuance of this RFQ in no way constitutes a commitment by the Corporation to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFQ or in the preparation of a contract for legal services. Firms responding must maintain a Texas office staffed with personnel who would be responsible for providing legal services to the Corporation.

The Corporation will evaluate responses to this RFQ to identify the most highly qualified firm to serve in the capacity of corporate counsel.

The Board reserves the right to negotiate all elements of the contract for legal services and to approve all personnel assigned to the Corporation's work. If a firm contemplates changing the assigned attorneys after a contract is executed, the firm must submit resumes of the additional assigned attorneys. The addition of such attorneys to the contract will be subject to the Corporation's approval.

Payment for services rendered prior to the issuance of the Bonds would be treated as a cost of issuance, payment of which would be contingent on the successful sale and issuance of the Bonds. Payment for services rendered after the sale and issuance of the Bonds would made from an ongoing revenue source established as part of the HB 1520 securitization financing.

Further, the Board will reserve the right to terminate a resulting contract for legal services for any reason, subject to written notification.

COST INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to this RFQ or any supplemental information required to clarify your original response shall be the sole responsibility of, and shall be borne by, the Respondent.

RELEASE OF INFORMATION AND OPEN RECORDS

Upon submission, all responses shall be deemed to be the property of the Corporation. Information submitted in response to this RFQ will not be released to the public by the Corporation during the response evaluation process or prior to Board's contract award. After the evaluation process is completed by the Board's award of a contract, responses and the information included therein may be subject to public disclosure under the Public Information Act, Texas Government Code, Ch. 552 (the "PIA"). Respondents have the right to assert the confidentiality of financial and trade information. Any information considered by Respondent to be confidential under the PIA must be clearly marked in bold text, as indicated below, on each page, and only those pages, where such information appears:

"Confidential Pursuant to [Cite to the relevant exception to disclosure under the PIA]."

Further, if the Respondent does assert that certain information in its response is confidential under the PIA, the response to this RFQ must contain the following statement at or near the bottom of the cover page:

"THIS DOCUMENT CONTAINS CERTAIN ITEMS OF INFORMATION FOR WHICH THE RESPONDENT HAS ASSERTED CONFINDENTIALITY UNDER THE TEXAS PUBLIC INFORMATION ACT"

The Corporation is not responsible for the release of confidential information after the award of a contract made pursuant to this RFQ if the document is not clearly marked as required. If a request for disclosure of is made for information marked confidential in accordance with this section, the Corporation will notify the Respondent so that the Respon-

dent may present argument and evidence to the Office of the Attorney General for protection from public disclosure, in accordance with the PIA.

TRD-202201074
Lee Deviney
Executive Director
Texas Public Finance Authority
Filed: March 28, 2022

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 47 (2022) is cited as follows: 47 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 "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 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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