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# TEXAS REGISTER

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# TEXAS REGISTER

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# THE GOVERNOR

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

## Appointments

### Appointments for April 12, 2022

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2027, David Iglesias of Tyler, Texas (Mr. Iglesias is being reappointed).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2027, Nancy Painter Paup of Fort Worth, Texas (replacing Fenton L. "Lynwood" Givens, Ph.D. of Plano, whose term expired).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2027, Martha D. Wong, Ed.D. of Houston, Texas (Dr. Wong is being reappointed).

### Appointments for April 13, 2022

Appointed to the Correctional Managed Health Care Committee for a term to expire February 1, 2025, Brian P. Edwards, M.D. of El Paso, Texas (replacing Diego De la Mora, M.D. of Horizon City, who resigned).

Appointed to the Correctional Managed Health Care Committee for a term to expire February 1, 2025, Julia A. Hiner, M.D. of Houston, Texas (replacing Jeffrey K. "Jeff" Beeson, D.O. of Crowley, whose term expired).

### Appointments for April 19, 2022

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2027, Benny L. Fogleman of Livingston, Texas (replacing Emanuel J. "Manny" Rachal of Livingston, whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2027, Margaret S.C. Keliher of Dallas, Texas (replacing Edward C. "Cary" Williams, III of Dallas, whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2027, Roger P. Nober of Fort Worth, Texas (replacing Whitney D. Beckworth of Fort Worth, whose term expired).

### Appointments for April 20, 2022

Appointed to the State Soil and Water Conservation Board for a term to expire February 1, 2024, Christine "Tina" Yturria Buford of Harlingen, Texas (Ms. Buford is being reappointed).

Greg Abbott, Governor

TRD-202201511



## Proclamation 41-3898

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that significant severe weather that began on April 12, 2022, which pro-

duced heavy rain, large hail, damaging winds, and multiple tornadoes, caused a disaster in Bell County in the state of Texas.

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 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 13th day of April, 2022.

Greg Abbott, Governor

TRD-202201474



## Proclamation 41-3899

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on March 18, 2022, as amended on March 21 and March 27, 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 Andrews, Aransas, Archer, Bee, Bell, Blanco, Borden, Bosque, Brewster, Brooks, Brown, Cameron, Coke, Coleman, Comanche, Concho, Cooke, Crane, Crockett, Culbertson, Dawson, Dimmit, Duval, Eastland, Ector, Edwards, Erath, Gaines, Garza, Grayson, Hemphill, Hidalgo, Hood, Howard, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kimble, Kleberg, Live Oak, Martin, Mason, Maverick, McCulloch, Medina, Menard, Midland, Nueces, Palo Pinto, Parker, Pecos, Potter, Presidio, Randall, Reagan, Real, Refugio, Roberts, Runnels, Starr, Terrell, Tom Green, Upton, Wichita, Willacy, Williamson, Winkler, Wise, Zapata, and Zavala counties; and

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

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 the counties listed above.

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 17th day of April, 2022.

Greg Abbott, Governor  
TRD-202201475



Proclamation 41-3900

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that significant severe weather that began on April 12, 2022, which produced heavy rain, large hail, damaging winds, and multiple tornadoes, caused a disaster in Williamson County in the state of Texas.

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 13th day of April, 2022.

Greg Abbott, Governor  
TRD-202201502



# THE ATTORNEY GENERAL

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

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

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

## Requests for Opinions

### RQ-0454-KP

#### Requestor:

The Honorable Matt Krause

Chair, House Committee on General Investigating

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the federal government has failed to uphold its obligations to protect Texas from invasion under article IV, section 4 of the United States Constitution, and whether Texas has the sovereign power to defend itself from invasion (RQ-0454-KP)

#### Briefs requested by May 12, 2022

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

TRD-202201492

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: April 19, 2022



## Opinions

### Opinion No. KP-0403

The Honorable Paul Bettencourt

Chair, Senate Committee on Local Government

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a school district may implement a policy making additional leave available to employees who are vaccinated for COVID-19 or medically exempt from the vaccination (RQ-0427-KP)

#### S U M M A R Y

A court would likely conclude that, by offering additional paid leave only to those employees showing proof of COVID-19 vaccination

or a medical exemption, the Houston Independent School District's COVID-19 paid leave policy violates Executive Order GA-39.

Any standard documentation that certifies an individual's COVID-19 vaccination status constitutes a "vaccine passport" under subsection 161.0085(b) of the Health and Safety Code. Subsection 161.0085(b) does not permit a government entity to issue nor share standard documentation that certifies an individual's COVID-19 vaccination status for any purpose other than for health care. Sharing information for an employment matter (or any other non-health care related purpose) would not be permitted under this statute. As written, subsection 161.0085(c) clearly prohibits a business from requiring submission of such documentation from a customer. The statute is silent as to whether a governmental entity may, or may not, require submission of such information.

HISD is not a covered entity under the federal Health Insurance Portability and Accountability Act; however, a person's vaccination status likely falls within the definition of "protected health information" under this federal statute.

HISD is a covered entity under the Texas Medical Records and Privacy Act and must comply with its provisions. Any information related to the vaccination status of an employee would be covered as "protected health information" under the TMRPA (as the statute adopts the federal definition) and treated accordingly.

#### Opinion No. KP-0404

The Honorable Pam Guenther

Jackson County Criminal District Attorney

115 West Main, Room 205

Edna, Texas 77957

Re: Whether article V, section 1-a, of the Texas Constitution prohibits a candidate from running for state judicial office if the candidate is seventy-four years of age on the date of the election but turns seventy-five before the term begins (RQ-0430-KP)

#### S U M M A R Y

Under section 1-a(1) of article V of the Texas Constitution, a judge serving a four-year term who will reach the age of seventy-five before the end of the current term must retire at the end of the term of office. Longstanding judicial precedent holds that the judge may neither run for nor serve subsequent terms as an elected judge in Texas.

#### Opinion No. KP-0405

The Honorable Brandon Creighton

Chair, Committee on Higher Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Proper method for distribution of Coronavirus Relief Funds in a jurisdiction with a population under 500,000, but within a county with a population over 500,000

(RQ-0431-KP)

**S U M M A R Y**

In the 2020 Coronavirus Relief Fund ("CRF"), the U.S. Congress appropriated \$150 billion to assist states, territories and tribal governments, and certain local governments to fund necessary but unbudgeted expenditures the governments incurred because of the COVID-19 public health emergency. Texas cities and counties with populations ex-

ceeding 500,000 were eligible for a direct payment of CRF funds from the U.S. Treasury. The CRF did not expressly require a direct recipient to redistribute its CRF funds to local governments within its jurisdiction and did not establish a methodology by which to redistribute its CRF funds. Accordingly, we cannot conclude a particular direct recipient's redistribution methodology is contrary to law.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202201493

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: April 19, 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 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

##### SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

###### 43 TAC §215.505

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts, on an emergency basis, amendments to 43 TAC §215.505 concerning denial of access to the temporary tag system, effective April 14, 2022. The amendments to §215.505 are necessary to clarify the rule text. As authorized by Government Code §2001.034, the department 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 Government Code §2001.034 may not be effective for longer than 120 days and may not be renewed for longer than 60 days.

**Background and Purpose.** The purpose of this emergency rulemaking is to correct a statutory citation regarding the department's temporary buyer's tag database under Transportation Code §503.0631, to add parentheses around text in §215.505(a)(2) that explains when a vehicle is presumed to not be in the dealer's or converter's inventory, and to change the word "and" to "or" in §215.505(a)(2) in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag database" under §215.505. Section 215.505 contains the process for denial of access to the temporary tag database under Transportation Code §503.0632(f) when the department determines that a dealer or converter is fraudulently obtaining temporary tags from the temporary tag database.

This emergency rulemaking is necessary because a subset of dealers will fraudulently obtain temporary tags from the temporary tag database without clarification of the rule text. Fraudulently obtained temporary tags pose an imminent peril to the public health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags to persons who engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement. Criminals use fraudulently obtained temporary tags that are registered under fake names and addresses to make it harder for law enforcement to trace the vehicles. Fraudulently obtained temporary tags also pose an imminent peril to the public health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags to persons who operate uninsured and uninspected vehicles that are hazards to Texas motorists and the en-

vironment. Fraudulently obtained temporary tags further pose an imminent peril to the public health, safety, and welfare because criminals can attempt to sell stolen vehicles or unsafe salvage vehicles to unsuspecting buyers by using temporary tags to make the vehicles appear legitimate. Criminals have fraudulently obtained temporary tags from the department's system and used the temporary tags in Texas, as well as other states, such as New York and Nevada. Criminals will take advantage of any loopholes they see as available to them.

One amendment corrects the statutory citation regarding the department's buyer's temporary tag database under Transportation Code §503.0631, which governs the buyer's temporary tag database. Section 215.505 cites to Transportation Code §503.06321, which does not exist. Section 215.505 applies to the dealer's and converter's temporary tag database under Transportation Code §503.0626, as well as the buyer's temporary tag database under Transportation Code §503.0631. Another amendment adds parentheses around text in §215.505(a)(2) that explains when a vehicle is presumed to not be in the dealer's or converter's inventory. Another amendment to §215.505(a)(2) changes the word "and" to "or" in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag database." Together, these clarifying amendments will close any perceived loopholes that criminals might otherwise try to exploit.

**STATUTORY AUTHORITY.** The emergency rulemaking is adopted under Government Code §2001.034, and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

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.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Transportation Code §§503.0626, 503.0631, 503.0632, and 503.067.

*§215.505. Denial of Dealer or Converter Access to Temporary Tag System.*

(a) In this section "fraudulently obtained temporary tags from the temporary tag database" means a dealer or converter account user

misusing the temporary tag database authorized under Transportation Code §503.0626 or §503.0631 [~~§503.0632~~] to obtain:

(1) an excessive number of temporary tags relative to dealer sales;

(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a [a] vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement); or [~~Statement; and~~]

(3) access to the temporary tag database for a fictitious user or person using a false identity.

(b) The department shall deny a dealer or converter access to the temporary tag database effective on the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or converter may seek a negotiated resolution with the department by demonstrating corrective actions taken or that the department's determination was incorrect.

(c) Notice shall be sent to the dealer's or converter's last known email and mailing address in the department's records.

(d) A dealer or converter may request a hearing on the denial as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under this section. The department must receive a written request for a hearing within 26 days of the date of the notice denying access to the database. The request for a hearing does not stay the denial of access under sub-

section (b) of this section. A dealer may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating corrective actions taken or that the department's determination was incorrect.

(e) The department may also issue a Notice of Department Decision stating administrative violations as provided in §215.500 concurrently with the notice of denial of access under this section. A Notice of Department Decision may include notice of any violation, including a violation listed under subsection (a) of this section.

(f) A department determination and action denying access to the temporary tag database becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

The agency certifies that legal counsel has reviewed the 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 April 14, 2022.

TRD-202201426

Aline Aucoin

General Counsel

Texas Department of Motor Vehicles

Effective date: April 14, 2022

Expiration date: August 11, 2022

For further information, please call: (512) 465-4206





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER A. GENERAL PROVISIONS

##### 1 TAC §533.4, §533.7

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §353.4, concerning Managed Care Organization Requirements Concerning Out-of-Network Providers, and §353.7, concerning Coordination of Benefits with Primary Health Insurance Coverage.

##### BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Senate Bill (S.B.) 1648, 87th Legislature, Regular Session, 2021 that amended Texas Government Code §533.038(g) and added new subsections (h) and (i) to §533.038.

The amendment to §533.038(g) removed the requirement for a member to have and maintain primary health benefit plan coverage in addition to Medicaid coverage to utilize the specialty provider provision in §533.038(g).

Section 533.038(h) requires a managed care organization (MCO) to develop a simple, timely and efficient process and make a good faith effort to negotiate a single-case agreement with a specialty provider.

Section 533.038(i) clarifies that a single-case agreement with a specialty provider is not considered accessing an out-of-network provider for the purposes of Medicaid MCO network adequacy requirements.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §353.4 updates a reference to §353.7 to align with the proposed amendment to §353.7.

The proposed amendment to §353.7 revises the title of the section from "Coordination of Benefits with Primary Health Insurance Coverage" to "Continuity of Care with Out-of-Network Specialty Providers." HHSC revised the title of the section to align with amended Texas Government Code §533.038(g) that removed the requirement for a member to have and maintain primary health benefit plan coverage to utilize the specialty provider provision in §533.038(g).

The proposed amendment to §353.7(a) deletes "and has and maintains healthcare coverage under a primary health benefit plan." The proposed amendment deletes "with which the mem-

ber is receiving care through the primary health benefit plan" and replaces it with "from whom the member is receiving care" and moves "at the time of the member's enrollment into the health care MCO" directly after "from whom the member is receiving care." These changes align the rule with amended §533.038(g).

The proposed amendment to §353.7(b) deletes the subsection in its entirety as the definition of "primary health benefit plan" is no longer necessary.

The proposed amendment to §353.7(c) renumbers the subsection to (b).

The proposed amendment to §353.7(d) renumbers the subsection to (c).

The proposed amendment to §353.7(e) renumbers the subsection to (d). Renumbered subsection (d), concerning the qualifying reasons an MCO no longer has to comply with the reasonable reimbursement methodology for authorized services performed by out-of-network providers as described in §353.4(f)(2), is amended by: (1) inserting "including a single-case agreement" as an example of an agreement an MCO may reach under the alternate-reimbursement-agreement qualifying reason, (2) striking "the member is no longer enrolled in a primary health benefit plan" as a qualifying reason, and (3) striking "alternate" and inserting "in-network" so that a member or member's legally authorized representative selecting an in-network (not alternate) specialty provider is now a qualifying reason. The last qualifying reason--a member who is no longer enrolled in the health care MCO--is unchanged.

The proposed amendment to §353.7 adds new subsection (e) to implement §533.038(h). This new subsection requires an MCO to make a good-faith effort to negotiate a single-case agreement with the out-of-network specialty provider using a simple, timely, and efficient process developed by the MCO, if a member wants to remain under the care of a Medicaid enrolled specialty provider that is not in the health care MCO's provider network.

The proposed amendment to §353.7 adds new subsection (f) to implement §533.038(i). This new subsection clarifies a single-case agreement with a specialty provider pursuant to §353.7 is not considered accessing an out-of-network provider for the purposes of Medicaid MCO network adequacy requirements.

##### 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, there may be an additional cost to state government as a result of enforcing and administering the rules as proposed. HHSC may need to increase health care MCO capitation rates to offset costs incurred. The MCOs would incur additional costs by applying the proposed amendment to §353.7 to more members and by reimbursing a specialty provider at the 95-100% fee-for-service

rate until the MCO and the specialty provider enter into a single-case agreement.

The fiscal effect on state government cannot be estimated at this time because HHSC does not have data to determine the number of members the rules will apply to or how long it will take an MCO and provider to enter into a single-case agreement.

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years 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 an existing rule;
- (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 apply to health care MCOs. No Texas Medicaid health care MCO qualifies as a small business, micro-business, or rural community under Texas Government Code §2006.001.

#### 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 implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be that a member with complex medical needs who has established a relationship with a specialty provider will be able to continue receiving care from that provider regardless of if the member has primary health benefit plan coverage in addition to Medicaid.

Trey Wood has also determined that for the first five years the rules are in effect, there may be an economic cost to health care MCOs who are required to comply with the proposed rules. An MCO may be required to apply §353.7 to more members. In addition, MCOs will be required to reimburse a specialty provider at the 95-100% fee-for-service rate until the MCO and the spe-

cialty provider enter into a single-case agreement. HHSC lacks information to determine the cost to comply.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC HEARING

A public hearing to receive comments on the proposal is scheduled for May 10, 2022 at 9:00 a.m. (central time) to be held virtually. You can register for the meeting at:

<https://attendee.gotowebinar.com/register/5699627906607234829>

The webinar ID is:

195-070-731

Persons requiring further information, special assistance, or accommodations should contact Heather Kuhlman at [heather.kuhlman@hhs.texas.gov](mailto:heather.kuhlman@hhs.texas.gov).

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751, Austin, Texas 78751; or e-mailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@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 22R017" 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; §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

The amendments implement Texas Government Code §531.0055 and Texas Government Code, §533.038.

§353.4. *Managed Care Organization Requirements Concerning Out-of-Network Providers.*

(a) Network adequacy. HHSC is the state agency responsible for overseeing and monitoring the Medicaid managed care program. Each managed care organization (MCO) participating in the Medicaid managed care program must offer a network of providers that is sufficient to meet the needs of the Medicaid population who are MCO members. HHSC monitors MCO members' access to an adequate provider network through reports from the MCOs and complaints received from

providers and members. Certain reporting requirements are discussed in subsection (g) of this section.

(b) MCO requirements concerning coverage for treatment of members by out-of-network providers for non-emergency services.

(1) Nursing facility services. A health care MCO must reimburse an out-of-network nursing facility for medically necessary services authorized by HHSC, using the reasonable reimbursement methodology in subsection (f) of this section. Nursing facility add-on services are considered "other authorized services" under paragraph (2) of this subsection, and are authorized by STAR+PLUS MCOs.

(2) Other authorized services. The MCO must allow referral of its member(s) to an out-of-network provider, must timely issue the proper authorization for such referral, and must timely reimburse the out-of-network provider for authorized services provided if the criteria in this paragraph are met. If all of the following criteria are not met, an out-of-network provider is not entitled to Medicaid reimbursement for non-emergency services:

(A) Medicaid covered services are medically necessary and these services are not available through an in-network provider;

(B) a participating provider currently providing authorized services to the member requests authorization for such services to be provided to the member by an out-of-network provider; and

(C) the authorized services are provided within the time period specified in the MCO's authorization. If the services are not provided within the required time period, a new request for referral from the requesting provider must be submitted to the MCO prior to the provision of services.

(c) MCO requirements concerning coverage for treatment of members by out-of-network providers for emergency services.

(1) An MCO may not refuse to reimburse an out-of-network provider for medically necessary emergency services.

(2) Health care MCO requirements concerning emergency services.

(A) A health care MCO may not refuse to reimburse an out-of-network provider for post-stabilization care services provided as a result of the MCO's failure to authorize a timely transfer of a member.

(B) A health care MCO must allow its members to be treated by any emergency services provider for emergency services, and services to determine if an emergency condition exists. The health care MCO must pay for such services.

(C) A health care MCO must reimburse for transport provided by an ambulance provider for a Medicaid recipient whose condition meets the definition of an emergency medical condition. Facility-to-facility transports are considered emergencies if the required treatment for the emergency medical condition, as defined in §353.2 of this subchapter (relating to Definitions), is not available at the first facility and the MCO has not included payment for such transports in the hospital reimbursement.

(D) A health care MCO is prohibited from requiring an authorization for emergency services or for services to determine if an emergency condition exists.

(3) Dental MCO requirements concerning emergency services.

(A) A dental MCO must allow its members to be treated for covered emergency services that are provided outside of a hospital or ambulatory surgical center setting, and for covered services provided

outside of such settings to determine if an emergency condition exists. The dental MCO must pay for such services.

(B) A dental MCO is prohibited from requiring an authorization for the services described in subparagraph (A) of this paragraph.

(C) A dental MCO is not responsible for payment of non-capitated emergency services and post-stabilization care provided in a hospital or ambulatory surgical center setting, or devices for craniofacial anomalies. A dental MCO is not responsible for hospital and physician services, anesthesia, drugs related to treatment, and post-stabilization care for:

(i) a dislocated jaw, traumatic damage to a tooth, and removal of a cyst;

(ii) an oral abscess of tooth or gum origin; and

(iii) craniofacial anomalies.

(D) The services and benefits described in subparagraph (C) of this paragraph are reimbursed:

(i) by a health care MCO, if the member is enrolled in a managed care program; or

(ii) by HHSC's claims administrator, if the member is not enrolled in a managed care program.

(d) Health care MCO requirements concerning coverage for services provided to certain members by an out-of-network "specialty provider" as that term is defined in §353.7(c) [§353.7(d)] of this subchapter (relating to Continuity of Care with Out-Of-Network Specialty Providers [Coordination of Benefits with Primary Health Insurance Coverage]).

(1) A health care MCO may not refuse to reimburse an out-of-network "specialty provider" enrolled as a provider in the Texas Medicaid program for services provided to a member under the circumstances set forth in §353.7 of this subchapter.

(2) In reimbursing a provider for the services described in paragraph (1) of this subsection, a health care MCO must use the reasonable reimbursement methodology in subsection (f)(2) of this section.

(e) An MCO may be required by contract with HHSC to allow members to obtain services from out-of-network providers in circumstances other than those described in subsections (b) - (d) of this section.

(f) Reasonable reimbursement methodology.

(1) Out-of-network nursing facilities.

(A) Out-of-network nursing facilities must be reimbursed:

(i) at or above ninety-five percent of the nursing facility unit rate established by HHSC for the dates of service for services provided inside of the MCO's service area; and

(ii) at or above one hundred percent of the nursing facility unit rate for the date of services for services provided outside of the MCO's service area.

(B) The nursing facility unit rate refers to the Medicaid fee-for-service (FFS) daily rate for nursing facility providers as determined by HHSC. The rate includes items such as room and board, medical supplies and equipment, personal needs items, social services, and over-the-counter drugs. The nursing facility unit rate also includes professional and general liability insurance and applicable nursing facility

rate enhancements. The nursing facility unit rate excludes nursing facility add-on services.

(2) Emergency and authorized services performed by out-of-network providers.

(A) Except as provided in §353.913 of this chapter (relating to Managed Care Organization Requirements Concerning Out-of-Network Outpatient Pharmacy Services) or subsection (j)(2) of this section, the MCO must reimburse an out-of-network, in-area service provider the Medicaid FFS rate in effect on the date of service less five percent, unless the parties agree to a different reimbursement amount.

(B) Except as provided in §353.913 of this chapter, an MCO must reimburse an out-of-network, out-of-area service provider at 100 percent of the Medicaid FFS rate in effect on the date of service, unless the parties agree to a different reimbursement amount, until the MCO arranges for the timely transfer of the member, as determined by the member's attending physician, to a provider in the MCO's network.

(3) For purposes of this subsection, the Medicaid FFS rates are defined as those rates for providers of services in the Texas Medicaid program for which reimbursement methodologies are specified in Chapter 355 of this title (relating to Reimbursement Rates), exclusive of the rates and payment structures in Medicaid managed care.

(g) Reporting requirements.

(1) Each MCO that contracts with HHSC to provide health care services or dental services to members in a service area must submit quarterly information in its Out-of-Network quarterly report to HHSC.

(2) Each report submitted by an MCO must contain information about members enrolled in each HHSC Medicaid managed care program provided by the MCO. The report must include the following information:

(A) the types of services provided by out-of-network providers for the MCO's members;

(B) the scope of services provided by out-of-network providers to the MCO's members;

(C) for a health care MCO, the total number of hospital admissions, as well as the number of admissions that occur at each out-of-network hospital. Each out-of-network hospital must be identified;

(D) for a health care MCO, the total number of emergency room visits, as well as the total number of emergency room visits that occur at each out-of-network hospital. Each out-of-network hospital must be identified;

(E) total dollars for paid claims by MCOs, other than those described in subparagraphs (C) and (D) of this paragraph, as well as total dollars billed by out-of-network providers for other services; and

(F) any additional information required by HHSC.

(3) HHSC determines the specific form of the report described in this subsection and includes the report form as part of the Medicaid managed care contract between HHSC and the MCOs.

(h) Utilization.

(1) Upon review of the reports described in subsection (g) of this section that are submitted to HHSC by the MCOs, HHSC may determine that an MCO exceeded maximum out-of-network usage standards set by HHSC for out-of-network access to health care services and dental services during the reporting period.

(2) Out-of-network usage standards.

(A) Inpatient admissions: No more than 15 percent of a health care MCO's total hospital admissions, by service area, may occur in out-of-network facilities.

(B) Emergency room visits: No more than 20 percent of a health care MCO's total emergency room visits, by service area, may occur in out-of-network facilities.

(C) Other services: For services that are not included in subparagraph (A) or (B) of this paragraph, no more than 20 percent of total dollars for paid claims by the MCO for services provided may be provided by out-of-network providers.

(3) Special considerations in calculating a health care MCO's out-of-network usage of inpatient admissions and emergency room visits.

(A) In the event that a health care MCO exceeds the maximum out-of-network usage standard set by HHSC for inpatient admissions or emergency room visits, HHSC may modify the calculation of that health care MCO's out-of-network usage for that standard if:

(i) the admissions or visits to a single out-of-network facility account for 25 percent or more of the health care MCO's admissions or visits in a reporting period; and

(ii) HHSC determines that the health care MCO has made all reasonable efforts to contract with that out-of-network facility as a network provider without success.

(B) In determining whether the health care MCO has made all reasonable efforts to contract with the single out-of-network facility described in subparagraph (A) of this paragraph, HHSC considers at least the following information:

(i) how long the health care MCO has been trying to negotiate a contract with the out-of-network facility;

(ii) the in-network payment rates the health care MCO has offered to the out-of-network facility;

(iii) the other, non-financial contractual terms the health care MCO has offered to the out-of-network facility, particularly those relating to prior authorization and other utilization management policies and procedures;

(iv) the health care MCO's history with respect to claims payment timeliness, overturned claims denials, and provider complaints;

(v) the health care MCO's solvency status; and

(vi) the out-of-network facility's reasons for not contracting with the health care MCO.

(C) If the conditions described in subparagraph (A) of this paragraph are met, HHSC may modify the calculation of the health care MCO's out-of-network usage for the relevant reporting period and standard by excluding from the calculation the inpatient admissions or emergency room visits to that single out-of-network facility.

(i) Provider complaints.

(1) HHSC accepts provider complaints regarding reimbursement for or overuse of out-of-network providers and conducts investigations into any such complaints.

(2) When a provider files a complaint regarding out-of-network payment, HHSC requires the relevant MCO to submit data to support its position on the adequacy of the payment to the provider. The data includes a copy of the claim for services rendered and an explanation of the amount paid and of any amounts denied.

(3) Not later than the 60th day after HHSC receives a provider complaint, HHSC notifies the provider who initiated the complaint of the conclusions of HHSC's investigation regarding the complaint. The notification to the complaining provider includes:

(A) a description of the corrective actions, if any, required of the MCO in order to resolve the complaint; and

(B) if applicable, a conclusion regarding the amount of reimbursement owed to an out-of-network provider.

(4) If HHSC determines through investigation that an MCO did not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described in subsection (f) of this section, HHSC initiates a corrective action plan. Refer to subsection (j) of this section for information about the contents of the corrective action plan.

(5) If, after an investigation, HHSC determines that additional reimbursement is owed to an out-of-network provider, the MCO must:

(A) pay the additional reimbursement owed to the out-of-network provider within 90 days from the date the complaint was received by HHSC or 30 days from the date the clean claim, or information required that makes the claim clean, is received by the MCO, whichever comes first; or

(B) submit a reimbursement payment plan to the out-of-network provider within 90 days from the date the complaint was received by HHSC. The reimbursement payment plan provided by the MCO must provide for the entire amount of the additional reimbursement to be paid within 120 days from the date the complaint was received by HHSC.

(6) If the MCO does not pay the entire amount of the additional reimbursement within 90 days from the date the complaint was received by HHSC, HHSC may require the MCO to pay interest on the unpaid amount. If required by HHSC, interest accrues at a rate of 18 percent simple interest per year on the unpaid amount from the 90th day after the date the complaint was received by HHSC, until the date the entire amount of the additional reimbursement is paid.

(7) HHSC pursues any appropriate remedy authorized in the contract between the MCO and HHSC if the MCO fails to comply with a corrective action plan under subsection (j) of this section.

(j) Corrective action plan.

(1) HHSC requires a corrective action plan in the following situations:

(A) the MCO exceeds a maximum standard established by HHSC for out-of-network access to health care services and dental services described in subsection (h) of this section; or

(B) the MCO does not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described in subsection (f) of this section.

(2) A corrective action plan imposed by HHSC requires one of the following:

(A) reimbursements by the MCO to out-of-network providers at rates that equal the allowable rates for the health care services as determined under §32.028 and §32.0281, Texas Human Resources Code, for all health care services provided during the period:

(i) the MCO is not in compliance with a utilization standard established by HHSC; or

(ii) the MCO is not reimbursing out-of-network providers based on a reasonable reimbursement methodology, as described in subsection (f) of this section;

(B) initiation of an immediate freeze by HHSC on the enrollment of additional recipients in the MCO's managed care plan until HHSC determines that the provider network under the managed care plan can adequately meet the needs of the additional recipients;

(C) education by the MCO of members enrolled in the MCO regarding the proper use of the MCO's provider network; or

(D) any other actions HHSC determines are necessary to ensure that Medicaid recipients enrolled in managed care plans provided by the MCO have access to appropriate health care services or dental services, and that providers are properly reimbursed by the MCO for providing medically necessary health care services or dental services to those recipients.

(k) Application to Pharmacy Providers. The requirements of this section do not apply to providers of outpatient pharmacy benefits, except as noted in §353.913 of this chapter (relating to Managed Care Organization Requirements Concerning Out-of-Network Outpatient Pharmacy Services).

§353.7. *Continuity of Care with Out-of-Network Specialty Providers [Coordination of Benefits with Primary Health Insurance Coverage].*

(a) A health care MCO must allow a member age 20 or younger, who [at the time of the member's enrollment into the health care MCO] has complex medical needs [and has and maintains healthcare coverage under a primary health benefit plan], to remain under the care of a Medicaid enrolled specialty provider from whom the member is receiving care at the time of the member's enrollment into the health care MCO [with which the member is receiving care through the primary health benefit plan], even if the specialty provider is an out-of-network provider.

[(b) For the purpose of this section "primary health benefit plan" has the meaning assigned by Texas Human Resources Code, §32.0422(a) but does not include a Medicaid plan.]

(b) [(e)] For the purpose of this section "complex medical needs" means a member receiving:

(1) Level 1 Service Coordination as authorized in the STAR Kids managed care contract; or

(2) Service Management as authorized in the STAR Health managed care contract.

(c) [(d)] For the purpose of this section "specialty provider" means one of the following provider types:

(1) a physician licensed under the Texas Occupations Code, Chapter 155, who has and maintains a specialty in:

(A) Adolescent Medicine (Teenagers);

(B) Allergist (Allergies);

(C) Ambulatory Medicine (General Non-Emergency Care);

(D) Cardiology, Cardiovascular (Heart, Blood Vessels);

(E) Colon/Rectal (Bowels);

(F) Dermatology (Skin);

(G) Endocrinology (Glands);

(H) Family Medicine (General Family Medical Care);

(I) Gastroenterology (Stomach, Digestion);

- (J) Genetics (Inherited Diseases, Birth Defects);
- (K) Hematology (Blood);
- (L) Hepatology (Liver);
- (M) Immunology (Immune System);
- (N) Infectious Diseases (Viral/Bacterial Infections);
- (O) Internal Medicine (General Medical Care);
- (P) Neonatology/Perinatology (Fetus and Newborns);
- (Q) Nephrology (Kidney);
- (R) Neurology (Brain, Nervous System);
- (S) Neurosurgery (Operations of the Brain, Spinal Cord);
- (T) Nuclear Medicine (Testing, e.g., MRI, CAT scan);
- (U) Obstetrics/Gynecology (Pregnancy, Women's Health);
- (V) Occupational Medicine (Work-Related Injuries);
- (W) Oncology (Cancer);
- (X) Ophthalmology (Eyes);
- (Y) Oral-Maxillofacial Surgery (Jaw and Mouth);
- (Z) Orthopedics (Bones and Joints);
- (AA) Otolaryngology (Ear, Nose, and Throat);
- (BB) Otology (Ears);
- (CC) Pediatrician (Babies, Children);
- (DD) Perinatology (Fetus);
- (EE) Physical Medicine (Rehabilitation);
- (FF) Plastic Surgery (Corrective Surgery);
- (GG) Psychiatry (Mental Illness);
- (HH) Pulmonology (Lungs, Breathing);
- (II) Radiology (X-Rays);
- (JJ) Reproductive Endocrinology (Reproductive System Diseases);
- (KK) Rheumatologist (Joints, Muscles, Tendons);
- (LL) Sports Medicine (Sports Injuries);
- (MM) Surgery (Operations);
- (NN) Thoracic Surgery (Chest Surgery);
- (OO) Urology (Urinary Tract); or
- (PP) Vascular Surgery (Operations of the Blood Vessels);

(2) an audiologist, as that term is defined in Texas Occupations Code, §401.001(1-a), licensed under the Texas Occupations Code, Chapter 401;

(3) a chiropractor that holds a license issued by the board created under the Texas Occupations Code, Chapter 201;

(4) a dietitian licensed under the Texas Occupations Code, Chapter 701;

(5) an optometrist licensed under the Texas Occupations Code, Chapter 351; or

(6) a podiatrist licensed under the Texas Occupations Code, Chapter 202.

(d) [(e)] A health care MCO must comply with the reasonable reimbursement methodology for authorized services performed by out-of-network providers as described in §353.4(f)(2) of this chapter (relating to Managed Care Organization Requirements Concerning Out-of-Network Providers) until:

(1) an alternate reimbursement agreement, including a single-case agreement, is reached with the member's specialty provider;

[(2) the member is no longer enrolled in a primary health benefit plan;]

(2) [(3)] the member or the member's LAR agree to select an in-network [alternate] specialty provider; or

(3) [(4)] the member is no longer enrolled in the health care MCO.

(e) If a member wants to remain under the care of a Medicaid enrolled specialty provider that is not in the health care MCO's provider network, the MCO must make a good-faith effort to negotiate a single-case agreement with the out-of-network specialty provider using a simple, timely, and efficient process developed by the MCO.

(f) A single-case agreement entered into under subsection (d)(1) of this section is not considered accessing an out-of-network provider for the purposes of Medicaid managed care organization network adequacy requirements.

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 April 13, 2022.

TRD-202201408

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 29, 2022

For further information, please call: (737) 243-5936

## CHAPTER 355. REIMBURSEMENT RATES

### SUBCHAPTER J. PURCHASED HEALTH SERVICES

#### DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

##### 1 TAC §355.8443

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8443, concerning Reimbursement Methodology for School Health and Related Services (SHARS).

##### BACKGROUND AND PURPOSE

The proposed rule amendment to §355.8443 adds text to align with the implementation of House Bill (H.B.) 706, 86th Legislature, Regular Session, 2019. H.B. 706 amended the Texas Education Code to permit SHARS providers to bill and receive reimbursement for allowable audiology services provided to

Medicaid-eligible children as prescribed in a plan created under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). H.B. 706 requires HHSC to adopt rules necessary to implement Texas Education Code Section 38.033 (redesignated as Section 38.034 by H.B. 3607, 87th Legislature, Regular Session, 2021) in consultation with the Texas Education Agency and as approved by the Centers for Medicare and Medicaid Services.

The proposal also implements changes to increase the integrity of the program by requiring additional detail to be collected regarding services reimbursed through the SHARS program, including data related to both individual recipients and specific services. This rule update also adds detail to increase transparency by clarifying definitions and processes for the SHARS program and includes new language on informal review processes and further information on appeals.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8443(a) is revised for clarity and refers to rules that permit audiology services prescribed in Section 504 Plan for Medicaid-eligible children to be reimbursed under the SHARS program.

The proposed amendment to §355.8443(b) adds definitions for "eligible student," "interim claim," and "Local Education Agency (LEA)," and relocates two definitions to new subsection (c) and makes minor edits for consistency. Subsequent subsections are relabeled to account for the addition of new subsections.

New §355.8443(c) refers to the parental consent requirement as described in §354.1342 that is applicable to the cost report ratios, revises the description of the IEP ratio and one-way trip ratio, and adds a description of a new Section 504 Plan ratio.

New §355.8443(d) provides time study requirements.

The proposed amendment to §355.8443(e)(1) explains the process for establishing interim rates and frequency for updating interim rates. Subsection (e)(2) is added to describe updated processes and requirements for submitting interim claims and specifies that claims must be valid and reimbursed to meet requirements. Subsequent subsections are relabeled to account for the new addition of subsection (2), and relabeled subsections (e)(3) and (e)(4) are amended for clarity and consistency.

The proposed amendments to §355.8443(f),(g), and (h) include revisions for clarity and consistency.

New subsection §355.8443(i) describes the informal review process requirements specific to the SHARS program.

The proposed amendment to §355.8443(j) adds language providing that if any conflict arise between the applicable sections of Chapter 355, Subchapter A and this section, the provisions of this section will prevail.

New §355.8443(k) adds a governing statement about SHARS program requirements.

The proposed amendment to §355.8443(l) adds clarification related to time study, interim claims, and cost reports.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the rule is in effect, there may be a fiscal impact to state government as this amendment adds the ability for reimbursement for audiology services for Section 504 eligible students. Current SHARS claims data does not reflect 504 status, so the total fiscal impact cannot be estimated prior to

implementation. Depending on the volume of services provided, there may be an increase in administrative fees paid to HHSC because fees are based on the total services provided.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule may affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand the existing rule;
- (7) the proposed rule will not increase the number of individuals subject to the rule; and
- (8) HHS system has insufficient information to determine the effect of the proposed rule.

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

Trey Wood, has determined that there will be no adverse economic effect on small businesses, micro businesses, or rural communities to comply with the proposed rule because participation in the program is voluntary and is offered only within the school setting.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons, it is necessary to receive a source of federal funds, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the proposed rule because it will increase the student population eligible for SHARS reimbursement of audiology services and increase the specificity of submitted data related to services reimbursed through the SHARS program.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC in the Brown-Heatly Public Hearing Room, 4900

North Lamar Boulevard, Austin, Texas. The meeting date and time will be posted on the HHSC Provider Finance SHARS website at <https://pfd.hhs.texas.gov/acute-care/school-health-and-related-services-shars>.

Please contact the SHARS staff at (512) 730-7400 or via email at [ProviderFinanceSHARS@hhs.texas.gov](mailto:ProviderFinanceSHARS@hhs.texas.gov) if you have any questions.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to SHARS staff at (512) 730-7400 in HHSC's Provider Finance Department.

Written comments on the proposal may be submitted to Provider Finance, Acute Care Services at 4601 W. Guadalupe St. Austin, Texas 78751 or via email at [ProviderFinanceSHARS@hhs.texas.gov](mailto:ProviderFinanceSHARS@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 22R067" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendment affects Texas Government Code §531.0055, §531.033, and Texas Human Resources Code §32.021, and implements Texas Education Code §38.034.

§355.8443. *Reimbursement Methodology for School Health and Related Services (SHARS).*

(a) Introduction. Reimbursement is available to a Local Education Agency (LEA) for providing certain direct medical and transportation services, known as SHARS, to a Medicaid-enrolled student with a disability age 20 years of age or younger. SHARS services are described in and must be prescribed in accordance with §354.1341 of this title (relating to Benefits and Limitations). [Direct medical services and transportation are available to children age 20 and under who are enrolled in Medicaid and eligible to receive services under the Individuals with Disabilities Education Act (IDEA). The services must be included in the child's individualized education program (IEP) established under IDEA.]

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

(1) Cost report--An annual report documenting the LEA's [provider's] Medicaid-allowable costs for all SHARS delivered during the previous federal fiscal year. The cost report is due on or before

April 1 of the year following the reporting period and must be certified in a manner specified by the Texas Health and Human Services Commission (HHSC). The primary purposes of the cost report are to:

(A) document [Document] the LEA's [provider's] total Medicaid-allowable costs for delivering SHARS, including direct costs and indirect costs, based on federally mandated cost allocation methodologies; and

(B) reconcile [Reconcile] interim payments to total Medicaid-allowable costs based on approved cost allocation methodology procedures.

(2) Eligible student--A Medicaid-enrolled student with a disability age 20 years of age or younger that receives a direct medical or transportation service as prescribed by §354.1341 of this title.

(3) Interim claim--A claim for a direct medical or transportation service paid at the interim rate that is provisional in nature pending the completion of a cost reconciliation and cost settlement for the cost reporting period.

(4) Local Education Agency (LEA)--A Texas independent school district or public charter school.

(5) [(2)] Time study--A statistically valid random sampling method used to identify the percentage of time spent performing actual direct medical services irrespective of payer and administrative cost.

[(3) IEP ratio--A comparison of the total number of Medicaid students with IEPs requiring direct medical services to the total number of students with IEPs requiring direct medical services.]

[(4) One-way trip ratio--A comparison of the total one-way trips for Medicaid students with IEPs requiring specialized transportation services to the total one-way trips for all students with IEPs requiring specialized transportation services.]

(c) Parental Consent. Prior to submitting its annual cost report, the LEA must meet the parental consent requirements in §354.1342 of this title (relating to Conditions for Participation) for each student included in the numerator of the following ratios required in the cost report.

(1) IEP ratio--A comparison of the total number of students enrolled in Medicaid with individualized education programs (IEPs) requiring direct medical services to the total number of students with IEPs requiring direct medical services.

(2) One-way trip ratio--A comparison of the total one-way trips for students enrolled in Medicaid with IEPs requiring specialized transportation services, who received direct medical services the same day, to the total one-way trips for all students with IEPs requiring specialized transportation services.

(3) Section 504 Plan ratio--A comparison of the total number of students enrolled in Medicaid with Section 504 Plans requiring audiology services to the total number of students with Section 504 Plans requiring audiology services.

(d) Time study. The LEA must participate in the HHSC-administered time study in the manner prescribed by HHSC.

(e) [(e)] Reimbursement methodology. LEAs [Providers] are reimbursed for direct medical and transportation services provided under the SHARS program [Program] on a cost basis.

(1) Interim rates. The interim rate is developed based on a percentage of the average per-unit cost for each SHARS service using actual cost data collected on cost reports and is subject to change under §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). In-



interim rates are updated annually or as determined by HHSC. [The interim rate is developed based on a biennial review of actual cost data submitted by providers and is subject to change under §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). Interim rates are set by extracting the settled cost report data from each district and determining the average cost to provide each unit of service provided under the SHARS Program.]

~~(A) Unit of service. The unit of service is a 15-minute interval for all covered services, except for:~~

~~(i) medication administration (a nursing service), for which the unit of service is a visit;~~

~~(ii) assessment services, for which the unit of service is a one-hour interval; and~~

~~(iii) personal care services on the bus and specialized transportation services, for which the unit of service is based on a one-way trip.]~~

~~(B) Adjustment. The average cost for each unit of service is adjusted to 85% of cost to arrive at the interim rate.]~~

(2) Interim claims.

(A) LEAs must submit:

(i) at least one interim claim for each direct medical service that an eligible student receives within the cost report period;

(ii) interim claims for all personal care services that an eligible student receives within the cost report period; and

(iii) interim claims for all eligible specialized transportation trips provided within the cost report period.

(B) Requirements for interim claims will be adjusted as needed based on direction from the Centers for Medicare and Medicaid Services.

(C) Interim claims must be valid and reimbursed to meet the requirements in this paragraph.

(3) [(2)] Interim payment. LEAs [Providers] are reimbursed for SHARS direct medical services and transportation services per unit of service at the lesser of:

(A) the LEA's [provider's] billed charges; or

(B) the interim rate.

(4) [(3)] Final reimbursement. The LEA's [provider's] final reimbursement amount is arrived at by a cost reconciliation and cost settlement process. As [The provider's total costs for both direct medical and transportation services as] reported in the cost report, the LEA's total costs for both direct medical and transportation services are adjusted using the federally mandated allocation methodologies.

(A) Direct medical [Medical] services costs. Salary and contract costs must be reported in the manner prescribed by HHSC.

(i) Direct costs. From the annual cost report, HHSC aggregates allowable costs for direct medical services, resulting in total direct costs. Direct costs for direct medical services include payroll costs and other costs that can be directly charged to direct medical services provided by contractors and LEA [school district] staff (i.e., salaries, benefits, and contract compensation). Direct medical services costs do not include transportation personnel costs.

(ii) Indirect costs. Indirect costs are determined by applying the LEA's [school district's] specific unrestricted indirect cost rate to its net direct costs. Texas LEAs [public school districts] use pre-

determined fixed rates for indirect costs. The Texas Education Agency (TEA) has, in cooperation with the United States Department of Education (USDE), developed an indirect cost plan to be used by LEAs [school districts] in Texas. As authorized in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for LEAs [school districts] for the USDE, which is the cognizant agency for LEAs [school districts].

(iii) Net allowable cost. Direct and indirect costs are added together and adjusted by the direct medical time study percentage, [and] the IEP ratio, and the 504 Plan ratio, resulting in a net Medicaid allowable cost for direct medical services.

(B) Transportation services. Salary and contract costs must be reported in the manner prescribed by HHSC.

(i) Direct costs. From the annual cost report, HHSC aggregates allowable direct costs for transportation, resulting in total direct costs. Direct costs for covered transportation services include payroll costs and other costs that can be directly charged to covered transportation services. Direct payroll costs include total compensation (i.e., salaries, benefits, and contract compensation) of bus drivers and mechanics. Other direct costs include costs directly related to the delivery of covered transportation services, such as professional and contracted services, contracted transportation costs, gasoline and other fuels, other maintenance and repair costs, vehicle insurance, interest, rentals, and vehicle depreciation.

(ii) Indirect costs. Indirect costs are determined by applying the LEA's [school district's] specific unrestricted indirect cost rate to its net direct costs. Texas public LEAs [school districts] use predetermined fixed rates for indirect costs. TEA has, in cooperation with the USDE, developed an indirect cost plan to be used by LEAs [school districts] in Texas. As authorized in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for LEAs [school districts] for the USDE, which is the cognizant agency for LEAs [school districts].

(iii) Net allowable cost. Net direct costs and indirect costs are added together and adjusted by the one-way trip ratio, resulting in a net Medicaid allowable cost for transportation services.

(f) [(4)] Cost reporting requirements. HHSC excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by LEAs [providers].

(1) Certification. Each LEA [provider] certifies through the cost report process its total actual federal and non-federal costs and expenditures.

(2) Reimbursement determinations and allowable costs. LEAs [Providers] are responsible for reporting only allowable costs on the cost report, except where HHSC prescribes [cost report instructions indicate] that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. All costs relating to Shared Service Arrangements and Co-operatives must be allocated to each respective LEA [school district provider].

(g) [(e)] Cost reconciliation. The Medicaid-allowable costs for direct medical and transportation services are added together and adjusted by the federal Medicaid assistance percentage (FMAP) to arrive at the federal share owed to the LEA [provider]. This amount is then reconciled with interim payments already made to the LEA [provider].

(h) [(f)] Cost settlement. HHSC uses a cost settlement process as follows: [:]

(1) HHSC retains one percent of the federal share of the total certified Medicaid allowable cost as an administrative fee to be

used for Health and Human Services administrative activities, including compliance monitoring, technical assistance, and to establish and maintain an audit reserve fund.

(2) If an LEA's [a provider's] interim payments exceed 99 percent of the LEA's [provider's] federal portion of the total certified Medicaid allowable costs, HHSC recoups the overpayment using one of these two methods:

(A) HHSC offsets all future claims payments from the LEA [provider] until the amount is recovered; or

(B) the LEA [The provider] returns an amount equal to the amount owed.

(3) If 99 percent of the LEA's [provider's] federal portion of the total certified Medicaid allowable costs exceeds the interim Medicaid payments, HHSC pays the difference to the LEA [provider in accordance with the final actual certification agreement].

(4) HHSC issues a notice of settlement within 24 months of the end of the reporting period.

(i) Informal review. An LEA who disputes an action or determination under this chapter may request an informal review under §355.110 of this title (relating to Informal Reviews and Formal Appeals). This section provides clarification unique to the SHARS program.

(1) HHSC Provider Finance must receive a written request for an informal review in a manner prescribed by HHSC no later than 30 calendar days from the date on the written notification of the adjustments. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. HHSC Provider Finance will extend this deadline if it receives a written request for the extension in a manner prescribed by HHSC, no later than 30 calendar days from the date of the written notice of adjustments. The extension gives the requester a total of 45 calendar days from the date of the written notice of adjustment to file a request for an informal review. If the 45th calendar day is a weekend day, national holiday, or state holiday, then the 45th day is considered the next business day following the 45th calendar day. A request for an informal review or extension that is not received by the stated deadline will not be accepted.

(2) An LEA must, with its request for an informal review, submit a concise statement of the specific actions or determinations it disputes, its recommended resolution, and any supporting documentation the LEA deems relevant to the dispute. It is the responsibility of the LEA to render all pertinent information at the time of its request for an informal review. Disputed actions or determinations that are not explicitly stated in the request will not be considered by HHSC, and failure of HHSC to act on implied items of dispute will not be considered grounds for a formal appeal. A request for an informal review that does not meet the requirements of this paragraph will not be accepted.

(3) The written request for the informal review or extension must be signed by an individual legally responsible for the conduct of the LEA or a legal representative for the LEA. The administrator or director of the LEA is not authorized to sign the request unless the administrator or director has this legal authority. A request for an informal review that is not signed by an individual legally responsible for the conduct of the LEA or a legal representative for the LEA will not be accepted.

(j) [(g)] General information. In addition to the requirements of this section, the cost reporting guidelines will be governed by the

information in: §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter [(relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs)]; and §355.110 of this chapter [(relating to Informal Reviews and Formal Appeals)]. If there is a conflict between an applicable section of Chapter 355, Subchapter A of this title (related to Cost Determination Process) and the provisions of this section, the provisions of this section will prevail.

(k) In addition to the requirements of this section, the LEA must comply with all provisions outlined in §354.1341 of this title and §354.1342 of this title.

(l) [(h)] Administrative contract violations. HHSC may take the following actions against an LEA [a provider] for administrative contract violations.[:]

(1) Time study. For failure to participate in or meet all time study requirements, HHSC will recoup all interim payments made during the cost reporting period and will not allow the LEA to submit a cost report for that reporting period.

(2) Interim claims. The LEA is ineligible to submit a cost report if they fail [Billing. For failure to bill for services covered by Medicaid or failure] to [bill] submit any interim claims in the manner and format prescribed by HHSC, or its designee, including the requirements in subsection (e)(2) of this section [the provider is ineligible to submit a cost report].

(3) Cost reports.

(A) For failure to submit a cost report by the due date, HHSC will recoup all interim payments made during the cost reporting period.

(B) HHSC will remove all unallowable costs and reserve the right to update a certified cost report if inaccurate information is identified or reported by the LEA.

(4) Other administrative contract violations. For all other administrative contract violations, HHSC will recoup all interim payments made during the cost reporting period.

(5) Appeals. An LEA [A provider] may request a hearing to appeal HHSC's action concerning an administrative contract violation. Formal appeals are conducted in accordance with the provisions of Chapter 357, Subchapter I of this title (relating to Hearings under the Administrative Procedure Act). If there is a conflict between an applicable section of Chapter 357 of this title (relating to Hearings) and the provisions of this chapter, the provisions of this chapter will prevail.

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 April 13, 2022.  
TRD-202201412



## TITLE 16. ECONOMIC REGULATION

### PART 8. TEXAS RACING COMMISSION

#### CHAPTER 301. DEFINITIONS

##### 16 TAC §301.1

###### Background, Justification and Summary

The Texas Racing Commission (Commission) proposes amendment to an existing rule in 16 Texas Administrative Code (TAC), Chapter 301, §301.1, concerning Definitions. The amendment to 16 TAC §301.1(74), which defines the term Specimen, is referred to as "proposed rule amendment" and is necessary to clarify the definition of specimen to include hair follicle and shaft to promote the integrity of racing and the safety of racing participants. The Texas Racing Act, Tex. Occ. Code §2034.001(c), states that the commission's rules must require state-of-the-art testing methods and that testing may: (1) be prerace or postrace as determined by the commission; and (2) be by an invasive or noninvasive method. The Texas Racing Act, Tex. Occ. Code §2034.001(d) also provides for the commission to adopt rules relating to the drug testing of license holders.

The proposed rule amendment was presented to the Texas Racing Commission Health & Safety subcommittee at open meetings held on February 2, 2022, and March 8, 2022, for implementation of hair testing in addition to current serum and urine testing of racehorses and occupational licensees, such as jockeys. The subcommittee did not make any changes to the proposed rule amendment and recommended the proposed rule amendment be placed on the Texas Racing Commission agenda for publication in the *Texas Register*.

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

The proposed rule amends §301.1, paragraph (74), to improve readability through the use of plain talk guidelines. The proposed rule amendment to the definition of the word Specimen also provides clarity and upgrades the drug testing process with the implementation of state-of-the-art hair testing to determine the use of a prohibited substance to influence the outcome of a horse race.

###### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Amy F. Cook, Executive Director, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule amendment.

Amy F. Cook has determined that for each of the first five years the proposed rule is in effect, there is no estimated increase or loss of revenue to the state or local government as a result of enforcing or administering the proposed rule amendment.

Amy F. Cook has determined that for each year of the first five years the proposed rule amendment is in effect, enforcing or ad-

ministering the proposed rule amendment does not have foreseeable implications relating to costs or revenues of state governments.

Amy F. Cook has determined that for each of the first five years the proposed rule amendment is in effect, enforcing or administering the proposed rule amendment does not have foreseeable implications relating to costs or revenue of local governments.

###### LOCAL GOVERNMENT IMPACT STATEMENT

Amy F. Cook has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code §2001.022.

###### PUBLIC BENEFITS

Amy F. Cook has also determined that for each year of the first five years the proposed rule amendment is in effect, the public benefit will be that the proposed rule amendment will strengthen public confidence in the integrity of horseracing and will deter the prohibited use of beta-agonistic or other prohibited substances in racehorses participating in racing at any time to influence the outcome of a race.

###### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL.

Amy F. Cook has determined that for each year of the first five years the proposed rule amendment is in effect, the anticipated economic costs to persons who are required to comply with the proposed rule amendment and implementation of hair testing of occupational licensees will be approximately \$250 per hair test, \$250 per initial racehorse hair test to the racetrack associations, and \$250 per split sample racehorse hair test to the racehorse trainer or owner/trainer. From October 12, 2021, until January 12, 2022, a total of 114 hair tests were conducted on racehorses for a total cost of \$ 20,600 according to the Texas A&M Veterinary Medical Diagnostic Laboratory. No hair testing of occupational licensees has been conducted to date. In 2021, a total of 118 urine drug tests on occupational licensees were conducted by the Commission. A majority of occupational licensees tested were jockeys, gate starters and grooms.

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

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

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

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

###### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0021, the Commission provides the following Government Growth Impact Statement for the proposed rule amendment. For each year of the

first five years the proposed rules will be in effect, the Commission has determined the following:

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

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

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

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

The proposed rule amendment does not create a new regulation.

The proposed rule amendment does expand, limit, or repeal an existing regulation. The proposed rule amendment expands state-of-the-art drug testing methods to include the collection and testing of hair samples upgrading the current drug testing program that includes serum and urine drug testing. The approximate cost per hair test is \$250 borne primarily by racetrack associations that will no longer be paying a supplemental fee increase each year since 2018 resulting in an overall net savings. The supplemental fee payment total for fiscal year 2020 by racetrack associations in supplemental fees was \$569,820.03; for fiscal year 2021 was \$336,672.73; and for fiscal year 2022 was \$102,383.00.

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

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

#### TAKINGS IMPACT ASSESSMENT

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

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

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

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* by mail to Virginia S. Fields, General Counsel Officer for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, by e-mail to [info@txrc.texas.gov](mailto:info@txrc.texas.gov), by telephone to (512) 833-6699, or by fax to (512) 833-6907.

#### STATUTORY AUTHORITY

The proposed rule amendment is proposed under Tex. Occ. Code §§2023.004 and 2034.001, which authorize the Commission to adopt rules as necessary to implement and administer

the Act and provide state-of-the-art drug testing. The statutory provisions affected by the proposed rule amendment are those set forth in Tex. Occ. Code Chapters 2023 and 2034. Texas Administrative Code Chapter 319, entitled Veterinary Practices and Drug Testing, is also affected by the proposed rule amendment.

#### §301.1. Definitions.

(a) (No change.)

(b) The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (73) (No change.)

(74) Specimen--a bodily substance, such as hair, blood, urine, [~~or~~] saliva, or other bodily tissues taken for analysis from a horse, greyhound, or individual in a manner prescribed by the Commission.

(75) - (92) (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 April 13, 2022.

TRD-202201407

Virginia Fields

General Counsel

Texas Racing Commission

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 490-4009



## CHAPTER 303. GENERAL PROVISIONS

### SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

#### 16 TAC §303.42

The Texas Racing Commission (Commission) proposes amendments to an existing rule 16 Texas Administrative Code (TAC), Chapter 303, §303.42(d), Approval of Charity Race Days. These amendments are referred to as "proposed rule amendments" and are necessary to broaden charity opportunities to participate in charity race days. The proposed rule amendments will be presented to the Texas Racing Commission at its Commission meeting on April 13, 2022, by staff recommendation. The rule amendment is proposed by the Commission Vice-Chair, Connie McNabb, DVM.

#### SECTION-BY-SECTION SUMMARY

The proposed rule amends §303.42 subsection (d) to improve readability through the use of plain talk guidelines. The proposed rule amendments will provide more charities the opportunity to participate in racetrack charity race days. Equine research for health and safety have not benefitted from charity days in the past as such research involves millions of dollars and does not result in increased public participation. Broadening the charitable participation will result in broadening public participation on charity race days. For example, charities benefitting veterans' organizations on a veteran holiday race day will increase public participation and will also greatly benefit veteran charitable organizations.

## FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Amy F. Cook, Executive Director, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule amendment.

Amy F. Cook has determined that for each of the first five years the proposed rule is in effect, there is no estimated increase or loss of revenue to the state or local government as a result of enforcing or administering the proposed rule amendment.

Amy F. Cook has determined that for each year of the first five years the proposed rule amendments are in effect, enforcing or administering the proposed rule amendments do not have foreseeable implications relating to costs or revenues of state governments.

Amy F. Cook has determined that for each of the first five years the proposed rule amendments are in effect, enforcing or administering the proposed rule amendments do not have foreseeable implications relating to costs or revenue of local governments.

## LOCAL GOVERNMENT IMPACT STATEMENT

Amy F. Cook has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code §2001.022.

## PUBLIC BENEFITS

Amy F. Cook has also determined that for each year of the first five years the proposed rule amendments are in effect, the public benefit will be that the proposed rule amendment will strengthen public confidence in the integrity of horseracing and provide more charities an opportunity to raise money benefitting more charities and more charities the opportunity to participate in racetrack charity race days.

## PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL.

Amy F. Cook has determined that for each year of the first five years the proposed rule amendments are in effect, there is no anticipated economic costs to persons who are required to comply with the proposed rule amendments.

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

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

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

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

## GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0021, the Commission provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed rules will be in effect, the Commission has determined the following:

1. The proposed rule amendments do not create or eliminate a government program.
2. Implementation of the proposed rule amendments do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule amendments do not require an increase or decrease in future legislative appropriations to the Commission.
4. The proposed rule amendments do not require an increase or decrease in fees paid to the Commission.
5. The proposed rule amendments do not create a new regulation.
6. The proposed rule amendments do not expand, limit, or repeal an existing regulation.
7. The proposed rule amendments do not increase or decrease the number of individuals subject to the proposed rule amendments' applicability.
8. The proposed rule amendments do not positively or adversely affect this state's economy.

## TAKINGS IMPACT ASSESSMENT

The Commission has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments 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 rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043

## EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

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

## PUBLIC COMMENTS

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

## STATUTORY AUTHORITY

The proposed rule amendments are proposed under Tex. Occ. Code §§ 2023.004 which authorize the Commission to adopt rules as necessary to implement and administer the Act. The statutory provisions affected by the proposed rule amendment are those set forth in Tex. Occ. Code Chapters 2023.

There are no other statutory, code or article affected by the proposed rule amendments.

§303.42. *Approval of Charity Race Days.*

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

(d) One [At least one] of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days shall be open to any charity that meets the requirements of subsection (b)(1) - (4) above. [At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.]

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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Virginia Fields

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



## CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

### SUBCHAPTER A. RACETRACK LICENSES

#### DIVISION 1. GENERAL PROVISIONS

##### 16 TAC §309.13

###### BACKGROUND, JUSTIFICATION AND SUMMARY

The Texas Racing Commission ("the Commission") proposes the repeal of 16 Texas Administrative Code §309.13, Supplemental Fee. The proposed repeal of the rule is necessary as the audit is unnecessary and would save racetracks significant fees. The purpose of this fee is to pay the Commission's costs to procure an independent audit or review of the economy, efficiency, and effectiveness of its operations, as requested by the racing industry. This fee has been assessed in addition to the racetrack license fees prescribed by 16 Texas Administrative Code §309.8 or other racetrack fees required by 16 Texas Administrative Code §309.11 and §309.12.

###### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Amy F. Cook, Executive Director, has determined that for the first five-year period the repeal of the rule is in effect, there will be no fiscal implications for local or state government enforcing the repeal. Enforcing or administering the repeal does not have foreseeable implications relating to cost or revenues of the state or local governments.

###### ANTICIPATED PUBLIC BENEFIT AND COST

Amy F. Cook, Executive Director, has determined that for each year of the first five years that the repeal is in effect, the anticipated public benefit will be cost savings to racetrack associations. There is no probable economic cost to persons required to comply with the repeal of the supplemental fee.

###### LOCAL EMPLOYMENT IMPACT STATEMENT

Amy F. Cook, Executive Director, has determined that the proposed repeal will not adversely affect the local economy, so the

agency is not required to prepare a local employment impact statement under Government Code §2001.022.

###### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed repeal of the rule is in effect, the government growth impact is as follows: the rule repeal does not create or eliminate a government program; the proposed repeal does not create any new employee positions or eliminate any existing employee positions; implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the agency; the proposed repeal does decrease the supplemental fee paid to the agency for the purpose of pay the Commission's costs to procure an independent audit or review of the economy, efficiency, and effectiveness of its operations, as requested by the racing industry; the proposed repeal does not create new regulations; the proposed repeal does not expand existing regulations; the proposed repeal does only repeal the existing regulation 16 TAC §309.103; the proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and the proposed repeal is not expected to have an adverse effect on this state's economy.

###### EFFECT ON SMALL AND MICRO-BUSINESSES

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

###### IMPACT ON EMPLOYMENT CONDITIONS

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

###### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

###### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Amy F. Cook, Executive Director, has determined the proposed rule repeal does not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

###### TAKINGS IMPACT STATEMENT

Amy F. Cook, Executive Director, has determined the proposed rule repeal will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

###### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

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

###### PUBLIC COMMENTS

All comments or questions regarding the proposed rule repeal may be submitted in writing within 30 days following publication of this notice in the *Texas Register* by mail to Virginia S. Fields, General Counsel Officer for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, by e-mail to [info@txrc.texas.gov](mailto:info@txrc.texas.gov), by telephone to (512) 833-6699, or by fax to (512) 833-6907.

#### STATUTORY AUTHORITY

The rule repeal is proposed under Tex. Occ. Code § 2023.002(b), which authorizes the Commission to adopt rules, issue licenses, and take any other necessary action relating exclusively to horse racing or greyhound racing.

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

The agency certifies that legal counsel has reviewed the proposed rule repeal and found them to be within the agency's legal authority to repeal.

#### §309.13. *Supplemental Fee.*

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 April 13, 2022.

TRD-202201414

Virginia Fields

General Counsel

Texas Racing Commission

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 490-4009



## CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

The Texas Racing Commission (Commission) proposes amendments to an existing rules 16 Texas Administrative Code (TAC), Chapter 319, §319.3(f), Medication Restricted, and §319.301(a) and (c), Testing Authorized. These amendments are referred to as "proposed rule amendments" and are necessary to clarify the implementation of hair testing for prohibited substances including beta-agnostics to promote the integrity of racing and the safety of racing participants. The Texas Racing Act, Tex. Occ. Code § 2034.001(c), states that the commission's rules must require state-of-the-art testing methods and that testing may: (1) be prerace or postrace as determined by the commission; and (2) be by an invasive or noninvasive method. The Texas Racing Act, Tex. Occ. Code § 2034.001(d) also provides for the commission to adopt rules relating to the drug testing of license holders.

The proposed rule amendments were presented to the Texas Racing Commission Health & Safety subcommittee at open meetings held on February 2, 2022, and March 8, 2022, for implementation of hair testing in addition to current serum and urine drug testing of racehorses and occupational licensees, such as jockeys. The subcommittee did not make any changes to the proposed rule amendments and recommended the proposed rule amendments be placed on the Texas Racing Commission April 13, 2022 agenda for approval to publish in the *Texas Register*.

## SECTION-BY-SECTION SUMMARY

The proposal amends §319.3 (f) and §319.301 (a) and (c) to improve readability through the use of plain talk guidelines. The proposed rule amendments to the medication restricted rule and testing authorized rule provides clarity and upgrades the drug testing process with the implementation of state-of-the-art hair testing to determine the use of a prohibited substance to influence the outcome of a horse race.

The proposed rule amends 16 TAC §319.3 (f) by removing specific prohibited substances *clenbuterol* and *albuterol* replacing the specific prohibited substances with the prohibited substance group of *beta-agonists*. The proposed rule also includes *attending* veterinarian to distinguish the attending veterinarian duties from the duties of the commission veterinarian. This will better distinguish between the duties of the attending veterinarian and the duties of the commission veterinarian.

The proposed rule also amends drug to plural use where appropriate and replaces the words *clenbuterol* and *albuterol* in other areas with the word *beta-agonists* where appropriate.

The proposed rule amends 16 TAC §319.301 (a) adding the words hair and tissue to the type of specimen to be collected from a race animal. The proposed rule amends 319.301 (c) by removing the word secretary and replacing the word with director to more accurately reflect the title of the position.

## FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Amy F. Cook, Executive Director, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule amendments.

Amy F. Cook has determined that for each of the first five years the proposed rule is in effect, there is no estimated increase or loss of revenue to the state or local government as a result of enforcing or administering the proposed rule amendments.

Amy F. Cook has determined that for each year of the first five years the proposed rule amendments are in effect, enforcing or administering the proposed rule amendments do not have foreseeable implications relating to costs or revenues of state governments.

Amy F. Cook has determined that for each of the first five years the proposed rule amendments are in effect, enforcing or administering the proposed rule amendments do not have foreseeable implications relating to costs or revenue of local governments.

## LOCAL GOVERNMENT IMPACT STATEMENT

Amy F. Cook has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

## PUBLIC BENEFITS

Amy F. Cook has also determined that for each year of the first five years the proposed rule amendments are in effect, the public benefit will be that the proposed rule amendment will strengthen public confidence in the integrity of horseracing and will deter the prohibited use of beta-agnostic or other prohibited substances in racehorses participating in racing at any time to influence the outcome of a race.

## PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL.

Amy F. Cook has determined that for each year of the first five years the proposed rule amendment is in effect, the anticipated economic costs to persons who are required to comply with the proposed rule amendment and implementation of hair testing of occupational licensees will be approximately \$250 per hair test, \$250 per initial racehorse hair test to the racetrack associations, and \$250 per split sample racehorse hair test to the racehorse trainer or owner/trainer. From October 12, 2021, until January 12, 2022, a total of 114 hair tests were conducted on racehorses for a total cost of \$ 20,600 according to the Texas A&M Veterinary Medical Diagnostic Laboratory. No hair testing of occupational licensees has been conducted to date. In 2021, a total of 118 urine drug tests on occupational licensees were conducted by the Commission. A majority of occupational licensees tested were jockeys, gate starters and grooms.

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

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

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

The Commission is exempt and not required to take further action under Texas Government Code § 2001.0045. The Commission is specifically exempt under Texas Government Code § 2001.0045(c)(7).

## GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code § 2001.0021, the Commission provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed rules will be in effect, the Commission has determined the following:

1. The proposed rule amendments do not create or eliminate a government program.
2. Implementation of the proposed rule amendments do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule amendments do not require an increase or decrease in future legislative appropriations to the Commission.
4. The proposed rule amendments do not require an increase or decrease in fees paid to the Commission.
5. The proposed rule amendments do not create a new regulation.
6. The proposed rule amendments do expand, limit, or repeal an existing regulation. The proposed rule amendment expands state-of-the-art drug testing methods to include the collection and testing of hair samples upgrading the current drug testing program that includes serum and urine drug testing. The approximate cost per hair test is \$250 borne primarily by racetrack associations that will no longer be paying a supplemental fee

increase each year since 2018 resulting in an overall net savings. The supplemental fee payment total for fiscal year 2020 by racetrack associations in supplemental fees was \$569,820.03; for fiscal year 2021 was \$336,672.73; and for fiscal year 2022 was \$102,383.00.

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

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

## TAKINGS IMPACT ASSESSMENT

The Commission has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments 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 rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043

## EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

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

## PUBLIC COMMENTS

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

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §319.3

#### STATUTORY AUTHORITY

The proposed rule amendments are proposed under Tex. Occ. Code §§ 2023.004 and 2034.001 which authorize the Commission to adopt rules as necessary to implement and administer the Act and provide state-of-the-art drug testing.

The statutory provisions affected by the proposed rule amendment are those set forth in Tex. Occ. Code Chapters 2023 and 2034. Texas Administrative Code Chapter 319 entitled Veterinary Practices and Drug Testing is also affected by the proposed rule amendment.

#### §319.3. Medication Restricted.

(a) - (e) (No change.)

(f) Except as provided in paragraph (1) of this subsection, ~~beta-agonists [elenubuterol and albuterol]~~ are prohibited substances and shall not be administered to a horse participating in racing at any time.

(1) A horse may only be administered beta-agonists [elenubuterol or albuterol] if:

(A) (No change.)

(B) within 24 hours of initiating treatment, the trainer or owner has submitted to the Commission a form prescribed by the Commission and signed by the attending veterinarian, indicating:



(i) - (ii) (No change.)

(iii) the name of the attending veterinarian;

(iv) that the attending veterinarian has personally examined the horse and made an accurate clinical diagnosis justifying the prescription;

(v) - (vi) (No change.)

(C) only FDA-approved beta-agonists [~~elenbuterol~~ or ~~albuterol~~] that are [~~is~~] labeled for use in the horse is prescribed and dispensed.

(2) A horse that has been administered beta-agonists [~~elenbuterol~~ or ~~albuterol~~] under paragraph (1) of this subsection shall be placed on the Veterinarian's List for a period ending not less than 30 days after the last administration of the drug as prescribed, subject to a negative test for [~~elenbuterol~~, ~~albuterol~~, or any other] beta-agonist drugs [~~drug~~] before being removed from the list.

(A) - (B) (No change.)

(C) The collected specimens must not have any detectable level of [~~elenbuterol~~, ~~albuterol~~, or any other] beta-agonist drugs [~~drug~~]. If no detectable level of [~~elenbuterol~~, ~~albuterol~~, or] any [~~other~~] beta-agonist drug is present, the horse shall be removed from the Veterinarian's List. If a detectable level of [~~elenbuterol~~, ~~albuterol~~, or] any [~~other~~] beta-agonist drug is present, then the horse shall remain on the Veterinarian's List until such time that a test specimen reveals no detectable level of [~~elenbuterol~~, ~~albuterol~~, or] any [~~other~~] beta-agonist drug.

(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 April 13, 2022.

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Virginia Fields

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



## SUBCHAPTER D. DRUG TESTING DIVISION 1. GENERAL PROVISIONS

### 16 TAC §319.301

#### STATUTORY AUTHORITY

The proposed rule amendments are proposed under Tex. Occ. Code §§ 2023.004 and 2034.001 which authorize the Commission to adopt rules as necessary to implement and administer the Act and provide state-of-the-art drug testing.

The statutory provisions affected by the proposed rule amendment are those set forth in Tex. Occ. Code Chapters 2023 and 2034. Texas Administrative Code Chapter 319 entitled Veterinary Practices and Drug Testing is also affected by the proposed rule amendment.

#### §319.301. Testing Authorized.

(a) The stewards and racing judges may require a specimen of hair, urine, blood, saliva, tissue or other bodily substance to be taken

from a race animal for the purpose of testing for the presence of a prohibited drug, chemical, or other substance.

(b) (No change.)

(c) A person is not entitled to a purse until drug testing has been completed and the executive director [~~secretary~~] has cleared the race for payment.

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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Virginia Fields

General Counsel

Texas Racing Commission

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For further information, please call: (512) 490-4009



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 21. STUDENT SERVICES

##### SUBCHAPTER D. TEXAS FIRST EARLY HIGH SCHOOL COMPLETION PROGRAM

#### 19 TAC §§21.50 - 21.55

The Texas Higher Education Coordinating Board (Coordinating Board) proposes a new subchapter with new rules in Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter D, §§21.50 - 21.55, concerning the Texas First Early High School Completion Program. Specifically, this new subchapter will promote efficiency in the state public education system and incentivize the enrollment of high performing students at eligible institutions within the state of Texas.

Texas Education Code §28.0253 provides the Coordinating Board with the authority to *adopt standards for a student to graduate early from high school and earn a diploma equivalent to the distinguished level of achievement by demonstrating early readiness for college.*

In order to implement the Texas First Early High School Completion Program, the Coordinating Board is charged with defining and codifying in rule the criteria a student must meet in order to participate in this program and qualify for the Texas First Scholarship Program upon early enrollment at an eligible Texas public institution of higher education. Authority to adopt rules is provided in Texas Education Code §28.0253(c). As required by Texas Education Code §28.0253(b), the Coordinating Board conferred with the Texas Education Agency to establish this program. The diploma established under this program enables a student to apply for admission to an eligible Texas public institution of higher education and also qualify for the Texas First Scholarship Program, established under Texas Education Code §§56.221-56.227, to promote efficiency in the state public education system and incentivize the enrollment of high performing students at eligible Texas institutions.

In addressing Texas Education Code §28.0253(c), agency staff consulted with admissions and enrollment management administrators from eligible institutions in establishing a framework for the Texas First Early High School Completion Program (Program) and providing additional feedback. The information provided in the rules helps ensure all stakeholders have a clear understanding of the criteria needed to meet the Program requirements and related benefits that may incentivize students who otherwise apply for postsecondary opportunities outside of Texas to consider applying at one or more of the eligible Texas institutions.

Rule 21.50 confirms the authority and purpose of the Program, as provided in Texas Education Code §28.0253(b)(c).

Rule 21.51 provides definitions for the Program, as included in Texas Education Code §28.0253(a).

Rule 21.52 provides the minimum criteria by which students demonstrate eligibility for the Program, including high school credits, minimum Grade Point Average, and achieving an overall minimum score on one of five assessments or achieving a Grade Point Average that ranks the student in the top ten percent of the student's class. Institutions and the Commissioner of Higher Education jointly developed and recommended these cut points as those that distinguish students who are college ready and prepared for post-secondary success. Allowing a student to meet the requirement based on class rank or assessment scores provides for a more holistic view of readiness.

Rule 21.52 also provides the assessments and related standards and competencies that demonstrate a student's mastery of each subject area for which the Coordinating Board and Commissioner of Higher Education have adopted college readiness standards, plus a language other than English, as required in Texas Education Code §28.0253(c). It provides a process by which a student verifies eligibility for the Program and codification on the student's transcript. These standards align to scores established by the Coordinating Board to define college readiness and provide for the use of assessments and scores commonly used by institutions to place students in college-level course work.

Rule 21.53 verifies that the diploma awarded through this program is equivalent to the distinguished level of achievement, as required in Texas Education Code §28.0253(f).

Rule 21.54 provides a notification requirement by the high school to its students and their parents or guardians listing the eligibility requirements for the Program, including the requirement for the student to provide official copies of applicable assessments to receive credit, as required in Texas Education Code §28.0253(g).

Rule 21.55 confirms that students who meet all the Program requirements according to Title 19 Texas Administrative Code §21.52 have met the requirements of the Texas Success Initiative according to Texas Education Code Chapter 51 and the initial eligibility requirements of the TEXAS Grant program, as authorized by the Toward EXcellence, Access, and Success Grant Program under Texas Education Code §56.3041.

Suzanne Morales-Vale, Ph.D., Senior Director, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules because the rules simply implement the scholarship provisions set out in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the

rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Suzanne Morales-Vale has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to promote efficiency in the state public education system and incentivize the enrollment of high performing students at eligible Texas institutions. Retention of high performing students in Texas presents a long-term benefit to the Texas economy and builds a strong workforce. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will change the number of individuals subject to the rule; and
- (8) the rules may provide a long-term positive affect on this state's economy.

Comments on the proposal may be submitted to Suzanne Morales-Vale, Ph.D., Senior Director, Division for College Readiness and Success, P.O. Box 12788, Austin, TX 78711-2788, or via email at [suzanne.morales-vale@highered.texas.gov](mailto:suzanne.morales-vale@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

New Subchapter D is proposed under Texas Education Code, §28.0253, which provides the Coordinating Board with the authority to *adopt standards for a student to graduate early from high school earn a diploma equivalent to the distinguished level of achievement by demonstrating early readiness for college*.

The proposed new subchapter affects Texas Education Code Chapters 11, 12, 25, 28, 29, 39, 48, 51; and rules in Title 19 Texas Administrative Code Chapters 74, 102, 105, 129; Title 19 Texas Administrative Code, Part 1, Chapters 4 and 21.

#### §21.50. Authority and Purpose.

(a) Authority. The authority for this subchapter is Texas Education Code §28.0253, establishing the Texas First Early High School Completion Program to allow public high school students who demonstrate early readiness for college to graduate early from high school.

(b) Purpose. The purpose of the Texas First Early High School Completion Program, in conjunction with the Texas First Scholarship Program established under Texas Education Code, Chapter 56, Subchapter K-1, is to promote efficiency in the state public education system and incentivize the enrollment of high performing students at eligible institutions within the state of Texas.

#### §21.51. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Coordinating board" means the agency, including staff, known as the Texas Higher Education Coordinating Board.

(2) "Eligible institution" means an institution of higher education that is designated as a research university or emerging research university under the coordinating board's accountability system.

(3) "Institution of higher education" has the meaning assigned by Texas Education Code §61.003.

(4) "Program" means the Texas First Early High School Completion Program established under this section.

§21.52. Eligibility for Texas First Diploma.

(a) Notwithstanding any other state or local law, a student is entitled to early high school graduation under the Texas First Early High School Completion Program if the student meets the criteria established in paragraphs (1) and (2) of this subsection. A student who achieves a required score on an assessment to meet the requirement of any one of paragraphs (1) and (2) of this subsection, shall be allowed to use that same assessment to meet the requirement of another section if the student's score meets the required minimum for each section.

(1) The student has met the following minimum criteria at the time of graduation:

(A) Earned at least twenty-two (22) high school credits by any permissible method, including credit by examination;

(B) Earned a final Grade Point Average equivalent to 3.0 on a 4.0 scale;

(C) Earned an overall scaled score in at least the 80th percentile on one or more of the following assessments: ACT, SAT, PSAT/NMSQT, TSIA/TSIA2, or GED, or alternatively, has a grade point average in the top ten percent of the student's current class during the current or semester prior to the counselor's or administrator's verification under subsection (b) of this section of a student's eligibility for early graduation under the Program; and

(D) Completed the requirement for the State of Texas Assessments of Academic Readiness End-of-Course (STAAR EOC) examinations for English I or II, Algebra I, and Biology by one of the following methods:

(i) If the student has taken the STAAR EOC for English I or II, Algebra I, and Biology, the student has achieved the satisfactory level of performance as defined by the Commissioner of Education; or

(ii) If the student has not taken the required STAAR EOC assessment for English I or II, Algebra I, or Biology, the student has satisfied the STAAR EOC requirement by achieving a passing score on a substitute assessment for that subject area authorized under Title 19 Texas Administrative Code, Chapter 101, Subchapter DD, §101.4002(b).

(2) The student has demonstrated the student's mastery of each subject area of English/Language Arts, Mathematics, Science, Social Studies, and a language other than English through assessments or other means eligible institutions commonly use to place students in courses that may be credited toward degree program requirements. A student may demonstrate mastery of each subject area, as applicable, by meeting one or more of the following criteria:

(A) Earning a score on the STAAR EOC assessment that meets the college readiness standards set out in Title 19 Texas Administrative Code, Chapter 4, Subchapter C, §4.54;

(B) Credit earned in a course in the core curriculum of an institution of higher education in which the student received at least a C; or

(C) Meeting the standards on the assessments set out in Figure 1.

Figure: 19 TAC §21.52(a)(2)(C)

(b) A counselor or administrator at the public school of a student who is eligible for early graduation under the Program must verify that the student meets the requirements in subsection (a)(1) and (2) of this section, prior to issuing a diploma to the student under this Program. A student is responsible for providing the official copy of the assessment results to their counselor or administrator to verify these requirements.

(c) A school that issues a diploma under the Program shall require the minimum number of assessments to demonstrate that the student meets the criteria established in subsection (a)(1) and (2) of this section and may not require a student to take any other STAAR End-of-Course assessment to graduate under the Program, except as required by this section.

§1.53. Diploma Equivalency.

A student who graduates early through the Program is considered to have earned a diploma with a distinguished level of achievement under Texas Education Code §28.025. The school district must provide each student who earns a Program diploma with a designation of distinguished level of achievement on the student's diploma.

§21.54. Notice to Students.

For the 2022-2023 school year, each high school must provide a written notification to each high school student and the student's parent or guardian listing the eligibility criteria for the Texas First Early High School Completion Program and Texas First Scholarship Program. After the 2022-2023 school year, the school must provide the notice to each student and the student's parent or guardian upon the student's initial enrollment in high school. The notice must include information about the requirement that a student must provide an official copy of their assessment results and transcripts, as applicable, to receive credit for the assessments and credits required to receive early graduation from the Program.

§21.55. Satisfaction of Other Requirements.

(a) A student who meets all Program requirements according to Title 19 Texas Administrative Code §21.52 has met the requirements of the Texas Success Initiative according to Texas Education Code Chapter 51.

(b) A student who meets all Program requirements according to Title 19 Texas Administrative Code §21.52 has met the initial eligibility requirements of the TEXAS Grant program, as authorized by the Toward EXcellence, Access, and Success Grant Program under the Texas Education Code §56.3041.

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 April 18, 2022.  
TRD-202201459

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CHAPTER 22. STUDENT FINANCIAL AID  
PROGRAMS

SUBCHAPTER T. TEXAS FIRST  
SCHOLARSHIP

19 TAC §§22.550 - 22.556

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter T, §§22.550 - 22.556, concerning Texas First Scholarship. Specifically, Senate Bill 1888 (87R) became effective on June 18, 2021, creating the Texas First Scholarship. The proposed rules add the sections necessary for the implementation and administration of the scholarship, as authorized by Texas Education Code, §56.227.

Specifically, §22.550 outlines the Authority and Purpose of the Texas First Scholarship Program, and §22.551 provides definitions applicable to the program.

The Texas First Scholarship is a portable scholarship, which a student may use at any public research or emerging research institution in the state. As such, §22.552 requires research and emerging research institutions to participate in the program. Research and emerging research institutions must also abide by the General Provisions outlined in Subchapter A of Chapter 22.

The statutory requirements that a student must meet to receive a Texas First Scholarship are outlined in §22.553, and §22.554 indicates the time period within which a recipient must use the state credit provided through the program.

The amount of the state credit issued through the Texas First Scholarship Program is tied in statute to the maximum value of the TEXAS Grant, and §22.555 indicates how the state credit value is calculated. The impact of the state credit on a student's other financial aid is also outlined in statute, as is the manner in which the state credit is to be applied to a student's educational expenses, both of which are also outlined in §22.555.

As outlined in Texas Education Code §56.226, the Texas First Scholarship Program uses a reimbursement approach, whereby institutions apply the state credit to a student's charges in one academic year and are reimbursed with state funding in the following academic year. As such, the reimbursement model, including the reporting required, is outlined in §22.556.

Charles W. Contéro-Puls, Ed.D., Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the creation of the administrative code necessary for the efficient administration of the Texas First Scholarship, created by Senate Bill 1888 (87R). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Charles.Contero-Puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement Texas Education Code, Chapter 56, Subchapter K-1, Texas First Scholarship Program.

The proposed new sections affect Texas Education Code, Sections 28.0253, 48.2642, and 56.221 - 56.227.

§22.550. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 56, Subchapter K-1, Texas First Scholarship Program. This subchapter establishes procedures to administer Texas Education Code, §§56.221 - 56.227.

(b) Purpose. The purpose of this program is to incentivize the enrollment of high performing students at the Texas public research and emerging research institutions of higher education.

§22.551. Definitions.

In addition to the words and terms defined in §13.142 of this Title (relating to Definitions) and §22.1 of this Chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Program--The Texas First Scholarship program.
- (2) Scholarship--The Texas First Scholarship.

§22.552. Eligible Institutions.

(a) Participation. Institutions designated as either a public research university or public emerging research university under the coordinating board's accountability system are required to apply the state

credit available to a student through the Program to the eligible student's costs of attendance, as outlined in §22.555 (relating to Scholarship Amount).

(b) Responsibilities. Participating public institutions are required to abide by the General Provisions outlined in Subchapter A of this Chapter (relating to General Provisions).

(c) Approval. Each eligible public institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner or his/her designee, prior to receiving reimbursement through the program.

§22.553. Eligible Students.

To qualify for a scholarship, a person must:

(1) be enrolled at an eligible institution, as outlined in §22.552 (relating to Eligible Institutions);

(2) be a Resident of Texas;

(3) have graduated early from high school under the Texas First Early High School Completion Program Chapter 21, Subchapter D;

(4) comply with Education Code Section 28.0256; and

(5) meet applicable standards outlined in Subchapter A of this Chapter (relating to General Provisions), including §§22.3 (relating to Student Compliance with Selective Service Registration), 22.4 (relating to Records Retention), and 22.9 (relating to Institutional Responsibilities).

§22.554. Discontinuation of Eligibility or Non-Eligibility.

State credit offered to a student through this program expires at the end of the first academic year following the student's graduation from high school.

§22.555. Scholarship Amount.

(a) The scholarship is issued by Board staff as a state credit for use by an eligible student at any eligible institution.

(1) For a student who graduated from high school two or more semesters or the equivalent earlier than the student's high school cohort, the state credit offered to the student will equal the maximum annual (two semester) TEXAS Grant award determined by Board staff for the applicable academic year.

(2) For a student who graduated from high school less than two semesters or the equivalent earlier than the student's high school cohort, the state credit offered to the student will equal half of the amount described by paragraph (1) of this subsection.

(b) The amount of state credit offered to a student under the program may not be considered in the calculation of any state or institutional need-based aid awards or the calculation of the student's overall financial need, unless the combination of the credit and other federal, state, and institutional financial aid, excluding work-study and loan programs, for which the student would otherwise be eligible exceeds the estimated total cost of attendance at the eligible institution at which the student is enrolled.

(c) On enrollment of an eligible student at an eligible institution, the institution shall apply the state credit to the student's charges for tuition, mandatory fees, and other costs of attendance.

(1) The amount applied for the semester is equal to the lesser of:

(A) The amount of the state credit available to the student; or

(B) The student's actual tuition, mandatory fees, and other costs of attendance at the institution.

(2) Remaining state credit may be applied to subsequent semesters within the first academic year following the student's graduation from high school.

§22.556. Institutional Reimbursement.

(a) Board staff shall distribute to each eligible institution an amount of funds equal to the amount of state credit applied by the institution under §22.555 (relating to Scholarship Amount) during the preceding academic year.

(b) The institution's annual Financial Aid Database submission will be used to calculate the reimbursement amount.

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 April 18, 2022.

TRD-202201465

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 427-6365



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 61. SCHOOL DISTRICTS

#### SUBCHAPTER AA. COMMISSIONER'S

#### RULES ON SCHOOL FINANCE

##### 19 TAC §61.1017

The Texas Education Agency (TEA) proposes the repeal of §61.1017, concerning alternative compensatory education allotment calculation. The proposed repeal would implement House Bill (HB) 3, 86th Texas Legislature, Regular Session, 2019, which modified the ways students are included in and generate funding for the state compensatory education allotment.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, Regular Session, 2019, redesignated Texas Education Code (TEC), §42.152, as §48.104 and amended the statute to change the ways students are included in and generate funding for the state compensatory education allotment.

Section 61.1027, Report on the Number of Educationally Disadvantaged Students for Calculating the Compensatory Education Allotment, was amended effective April 19, 2022, to address the legislative changes of HB 3 that reflect the ways in which students are included in and generate funding for the state compensatory funding allotment. Therefore, §61.1017 is no longer necessary.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation to implement changes to the state compensatory education allotment by HB 3, 86th Texas Legislature, Regular Session, 2019. The changes to the state compensatory education allotment were incorporated into §61.1027 under a separate rule action.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be the implementation of HB 3, 86th Texas Legislature, Regular Session, 2019, which changed the way students are included in and generate funding for the state compensatory education allotment. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins April 29, 2022, and ends May 31, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 29, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The repeal is proposed under Texas Education Code, §42.152, redesignated as §48.104 and amended by House Bill 3, 86th Texas Legislature, Regular Session, 2019, which allows the commissioner of education to adopt rules for the administration of that section, including the calculation of the number of educationally disadvantaged students.

**CROSS REFERENCE TO STATUTE.** The repeal implements Texas Education Code, §42.152, redesignated as §48.104 and amended by House Bill 3, 86th Texas Legislature, Regular Session, 2019.

§61.1017. *Alternative Compensatory Education Allotment Calculation.*

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 April 18, 2022.

TRD-202201455

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 475-1497



## SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

### 19 TAC §61.1025

The Texas Education Agency (TEA) proposes an amendment to §61.1025, concerning Public Education Information Management System (PEIMS) data and reporting standards. The proposed amendment would reflect modifications to Texas Education Code (TEC), §48.009, made by Senate Bill (SB) 2050, 87th Texas Legislature, Regular Session, 2021, relating to the reporting of bullying incidents, including cyberbullying.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 61.1025 defines PEIMS data and reporting standards used by school districts and open-enrollment charter schools to submit data required by TEA to perform its legally authorized functions.

SB 2050, 87th Texas Legislature, Regular Session, 2021, added TEC, §48.009(b-4), to require that school districts and open-enrollment charter schools annually report through PEIMS the number of reported incidents of bullying that have occurred at each campus, including the number of incidents of bullying that included cyberbullying.

The proposed amendment would implement SB 2050 by updating §61.1025(b)(2) to clarify that PEIMS data elements include the number of reported incidents of bullying that have occurred at each campus, including the number of incidents of bullying that included cyberbullying.

**FISCAL IMPACT:** Terri Hanson, associate commissioner for customer relationship management and data standards, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what SB 2050 requires. SB 2050 requires local education agencies (LEAs) to

report incidents of bullying, including cyberbullying, that have occurred at each campus. TEA submitted a fiscal note estimating the initial cost to the state to be \$43,476.64 to implement the new statutorily required data collection, but costs were absorbed using existing resources because no appropriations were made. In addition, LEAs may see some increased costs related to collecting data on bullying and cyberbullying incidents to comply with statute. To a lesser degree, LEAs may see increased costs related to updating their student codes of conduct and other related policies and procedures. Since implementation decisions are made at the local level, it is difficult to estimate the fiscal impact on any given LEA.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding two data elements to be reported in PEIMS: the number of reported incidents of bullying that have occurred at each campus and the number of incidents of bullying that have included cyberbullying.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Hanson has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and providing school districts and open-enrollment charter schools with clarifications on required data elements to be reported in PEIMS. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have a data and reporting impact by including in the rule two required data elements to be reported in an existing data collection. The two new elements were added to PEIMS beginning with the 2021-2022 reporting year. Under the proposed amendment, both school districts and open-enrollment charter schools would

be required to report the number of reported incidents of bullying and the number of reported incidents of bullying that included cyberbullying that have occurred at each campus.

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins April 29, 2022, and ends May 31, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 29, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code, §48.009(b-4), as added by Senate Bill 2050, 87th Texas Legislature, Regular Session, 2021, which requires the agency to adopt rules necessary to require school districts and open-enrollment charter schools to annually report through the Public Education Information Management System the number of reported incidents of bullying that have occurred at each campus, including the number of incidents of bullying that included cyberbullying.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §48.009(b-4), as added by Senate Bill 2050, 87th Texas Legislature, Regular Session, 2021.

*§61.1025. Public Education Information Management System (PEIMS) Data and Reporting Standards.*

(a) (No change.)

(b) Standards. Data standards, established by the commissioner of education under Texas Education Code (TEC), §48.008, shall be used by school districts and charter schools to submit information required for the legislature and the TEA to perform their legally authorized functions. Data standards shall be published annually in official TEA publications. These publications shall be widely disseminated and include:

(1) (No change.)

(2) descriptions of data elements and the codes used to report them, which include the number of reported incidents of bullying, including cyberbullying, that have occurred at each campus; the number of reported incidents of cyberbullying at each campus; and pregnancy as a reason a student withdraws from or otherwise no longer attends public school;

(3) - (4) (No change.)

(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 April 18, 2022.

TRD-202201446

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Earliest possible date of adoption: May 29, 2022  
For further information, please call: (512) 475-1497



## CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING MASTER TEACHER GRANT PROGRAMS

### 19 TAC §§102.1011, 102.1013, 102.1015, 102.1017

The Texas Education Agency (TEA) proposes the repeal of Chapter 102, Subchapter BB, §§102.1011, Master Reading Teacher Grant Program; 102.1013, Master Mathematics Teacher Grant Program; 102.1015, Master Science Teacher Grant Program; and 102.1017, Master Technology Teacher Grant Program, concerning master teacher grant programs. The proposed repeal would remove the rules because their authorizing statute no longer exists.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Under the authority of Texas Education Code (TEC), §§21.410-21.413, the commissioner exercised rulemaking authority to adopt rules to implement the Master Reading, Master Mathematics, Master Science, and Master Technology Teacher Grant Programs through the adoption of §§102.1011, 102.1013, 102.1015, and 102.1017 between 1999 and 2010. These rules implemented grant programs and made grants to school districts to pay stipends to selected certified master reading, mathematics, science, and technology teachers who taught at high-need campuses as identified in rule.

House Bill 3, 86th Texas Legislature, 2019, removed TEC, §§21.410-21.413. The proposed repeal of Chapter 102, Subchapter BB, is necessary since the authorizing statute no longer exists.

**FISCAL IMPACT:** Mike Meyer, deputy commissioner for finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed

rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations by removing rules for which statutory authority no longer exists.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be the removal of rules for which statutory authority no longer exists. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins April 29, 2022, and ends May 31, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 29, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The repeal is proposed under House Bill 3, §4.001, 86th Texas Legislature, 2019, which repealed Texas Education Code, §§21.410-21.413, which established master teacher grant programs.

**CROSS REFERENCE TO STATUTE.** The repeal implements House Bill 3, §4.001, 86th Texas Legislature, 2019.

§102.1011. *Master Reading Teacher Grant Program.*

§102.1013. *Master Mathematics Teacher Grant Program.*

§102.1015. *Master Science Teacher Grant Program.*

§102.1017. *Master Technology Teacher Grant Program.*

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

Filed with the Office of the Secretary of State on April 18, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 475-1497





## SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

### 19 TAC §102.1053

The Texas Education Agency (TEA) proposes the repeal of §102.1053, concerning the mathematics instructional coaches pilot program. The proposed repeal would remove the rule because its authority, Texas Education Code (TEC), §21.4541, was repealed by Senate Bill (SB) 1267, 87th Texas Legislature, Regular Session, 2021.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Under the authority of TEC, §21.4541, the commissioner exercised rulemaking authority to adopt rules to implement the Mathematics Instructional Coaches Pilot Program through the adoption of §102.1053. This rule established and implemented the pilot program to provide grants to participating school districts to teachers who instruct mathematics at the middle, junior high, or high school levels.

SB 1267, 87th Texas Legislature, Regular Session, 2021, removed TEC, §21.4541. The proposed repeal of §102.1053 is necessary since the authorizing statute no longer exists.

**FISCAL IMPACT:** Mike Meyer, deputy commissioner of finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation by removing a rule for which statutory authority no longer exists.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing

the proposal would be the removal of a rule for which statutory authority no longer exists. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins April 29, 2022, and ends May 31, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 29, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The repeal is proposed under Senate Bill 1267, §24, 87th Texas Legislature, Regular Session, 2021, §24, which repealed Texas Education Code, §21.4541, which required the commissioner to establish and implement a Mathematics Instructional Coaches Pilot Program.

**CROSS REFERENCE TO STATUTE.** The repeal implements Senate Bill 1267, §24, 87th Texas Legislature, Regular Session, 2021.

*§102.1053. Mathematics Instructional Coaches Pilot Program.*

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

Filed with the Office of the Secretary of State on April 18, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 112. CONTROL OF AIR POLLUTION FROM SULFUR COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§112.100 - 112.108, 112.110 - 112.118, 112.200 - 112.203, 112.206 - 112.208, 112.210 - 112.213, 112.216 - 112.218, 112.220 - 112.228, 112.230 - 112.238, 112.240 - 112.248, and 112.300 - 112.308.

If adopted, the new sections of Chapter 112 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

## Background and Summary of the Factual Basis for the Proposed Rules

The federal Clean Air Act (CAA) (42 United States Code (USC), §§7401 et seq.) requires the EPA to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. After a NAAQS is revised, each state is required to submit a SIP revision to the EPA that provides for attainment and maintenance of the NAAQS for areas that are not meeting the revised standard. On June 22, 2010, the EPA published a revised sulfur dioxide (SO<sub>2</sub>) NAAQS, adopting a 75 parts per billion (ppb) one-hour primary standard, effective August 23, 2010 (75 *Federal Register* (FR) 35520). SO<sub>2</sub> pollution results from the direct emissions from sources (not as a result of chemical interactions of various compounds in the air) and concentrations of SO<sub>2</sub> are generally expected to be highest closer to emission sources and lowest further away, due to dispersion of emissions in the air. Therefore, this proposed rule establishes site and source specific SO<sub>2</sub> emission limits and associated requirements to ensure attainment of the 2010 SO<sub>2</sub> NAAQS as discussed further in this rule preamble.

On March 26, 2021, the EPA published designations for portions of Howard, Hutchinson, and Navarro Counties as nonattainment for the 2010 SO<sub>2</sub> NAAQS, effective April 30, 2021 (86 FR 16055). The attainment date for all three nonattainment areas is April 30, 2026. An air quality modeling analysis showing that enforceable emission limits will provide for attainment of the NAAQS is part of the required attainment demonstration SIP revisions being proposed concurrently with this proposal for the nonattainment areas. The air quality modeling analyses indicate that reductions from current actual and allowable emission rates are needed in each of the three nonattainment areas. To provide time for implementation and compliance as well as to provide at least one full calendar year of data, the reductions are required to occur by January 1, 2025. The agency proposes these rules to make the emissions reductions necessary to demonstrate attainment. If adopted, the proposed rules will be submitted to the EPA as part of the SIP and, upon EPA approval, would be both state and federally enforceable and continue to be effective until EPA approval of their repeal or modification.

The concurrently proposed attainment demonstration SIP revisions include a technical analysis to determine the level of emission reductions necessary to attain the 2010 SO<sub>2</sub> NAAQS in each of these nonattainment areas. In addition to other requirements, the attainment demonstration includes an assessment of all sources that emit SO<sub>2</sub> in the nonattainment area and modeling that demonstrates attainment of the NAAQS and the corresponding emission limits and other requirements for SO<sub>2</sub> sources in the nonattainment area. The attainment demonstration modeling is the basis for the commission's determination regarding the necessity for the emission reductions required by these proposed rules. Information concerning the concurrent attainment demonstration SIP revision proposals for each nonattainment area are available on the commission's website or by contacting commission staff associated with this rulemaking.

As part of the concurrently proposed SIP revisions, the TCEQ modeled the information provided by each site in each nonattainment area. Current allowable emission rates or lower emission rates required to demonstrate attainment were included in the modeling. The EPA has historically used pollutant-specific concentration levels, known as significant impact levels (SIL),

to identify the degree of air quality impact that causes or contributes to a violation of a NAAQS or Prevention of Significant Deterioration increment. As a result, the TCEQ used the SIL for SO<sub>2</sub> of 3 ppb or 7.85 micrograms per cubic meter (µg/m<sup>3</sup>) to determine which sources were the most significant contributors to nonattainment. The TCEQ identified the emission rates that modeled attainment by using an iterative process that included both modeling of all SO<sub>2</sub> emissions in a nonattainment area and consultation with companies to ensure that source characteristics and operational practices were correctly represented. The proposed rules for each nonattainment area covered in this proposed rulemaking specify the emission rates needed to model attainment, as indicated in the concurrently proposed SIP revisions for Howard, Hutchinson, and Navarro Counties. Any future increase of the emissions limits or change in location of the sources specified in the proposed rules would require rulemaking and a SIP revision to ensure federal enforceability of the emission reductions required for attainment. Even if a permit change is required, rulemaking and a SIP revision would still be required.

The CAA, §172(c)(1), requires that nonattainment area SIP revisions also incorporate all reasonably available control measures (RACM), including reasonably available control technology (RACT), for sources of relevant pollutants. The EPA explains in its April 23, 2014 memorandum *Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions* (2014 SO<sub>2</sub> SIP guidance) that states should consider all RACM, including RACT, that can be implemented in light of the attainment needs for the affected SO<sub>2</sub> nonattainment area; and those control measures must be permanent and enforceable. EPA considers that which is necessary for attainment of the 2010 SO<sub>2</sub> NAAQS to be RACM including RACT. Air quality dispersion modeling demonstrates that emission limits established in the proposed rule will result in attainment of the 2010 SO<sub>2</sub> NAAQS. The emission rates provided in these proposed rules for the specific sources were identified by the modeling in the concurrently proposed SIP revisions as necessary to attain the 2010 SO<sub>2</sub> NAAQS in the associated nonattainment areas. Because the proposed emission rates from the specified sources were identified as sufficient to demonstrate attainment, the commission determined that those requirements provide for the necessary emissions reductions of SO<sub>2</sub> to satisfy RACM, including RACT, for the sources of SO<sub>2</sub> identified in the affected areas as contributing to nonattainment.

The proposed rules for each nonattainment area are specific to the sites and sources that emit SO<sub>2</sub> within those areas, and the proposed rules (if adopted) will continue to apply to the sites and sources regardless of ownership, operational control, or other documentation-related changes. To ensure that applicability is clear for both the public and current regulated entities, the proposed rules specify the regulated entity numbers and emission point numbers (EPN) for each site and source (production unit or control device). The proposed rules are based on specific information provided by the affected companies or where information on anticipated changes was not provided, alternative sources of information for control options to achieve the emission reductions required for attainment. In some cases, requirements are also based on provisions for the control of SO<sub>2</sub> in consent decrees between the companies and the EPA for specific sites, and in no case do the proposed rules conflict with consent decree requirements.

The rules are proposed in Chapter 112, Control of Air Pollution from Sulfur Compounds as new Subchapter E, Requirements in the Howard County Nonattainment Area; Subchapter F, Require-

ments in the Hutchinson County Nonattainment Area; and Subchapter G, Requirements in the Navarro County Nonattainment Area with a separate division for each site. The provisions in each division are covered in the same order for consistency. The emission limits in the proposed rules do not provide authorization for emissions by the sources. As required by commission rules, emission authorization is required as specified in 30 Texas Administrative Code (TAC) Chapters 106, 116, and 122. If adopted by the commission and approved by the EPA, the emission limits and associated requirements specified for the sources in new Subchapters E, F, and G will satisfy FCAA RACT and RACM necessary to attain and maintain the 2010 SO<sub>2</sub> NAAQS and may not be changed without EPA approval. The emission limits and associated requirements apply only to specific sources as identified in the proposed rules. To ensure the continued applicability of the specified emission limits and associated requirements, the proposed rules contain prohibitions on changing an EPN designation for the sources subject to these rules.

The Howard County SO<sub>2</sub> nonattainment area designated by the EPA consists of a portion of Howard County. The Delek US Holdings' Big Spring Refinery site (Delek Big Spring Refinery), the Tokai Carbon CB LTD's Big Spring Carbon Black Plant site (Tokai Big Spring Carbon Black Plant), and BHER Power Resources Inc's C R Wing Cogeneration Plant site (BHER C R Wing Cogeneration Plant) are the sites with SO<sub>2</sub> emissions within the Howard County nonattainment area. The Delek Big Spring Refinery manufactures transportation fuels, solvents, finished asphalt, and liquified petroleum gas. The Tokai Big Spring Carbon Black Plant manufactures carbon black for use in various industrial applications, such as tires. The BHER C R Wing Cogeneration Plant generates electricity. Both the Delek Big Spring Refinery and Tokai Big Spring Carbon Black Plant are the sites covered in Subchapter E. The BHER C R Wing Cogeneration Plant is not included in the rules because attainment demonstration modeling showed its contribution to the modeled design value in the nonattainment area does not exceed the SIL.

The Hutchinson County SO<sub>2</sub> nonattainment area designated by the EPA consists of a portion of Hutchinson County. There are eight sites with SO<sub>2</sub> emissions in the nonattainment area, owned and/or operated by the following regulated entities: 1) Chevron Phillips Chemical LP's Borger Plant site (CP Chem Borger Plant); 2) IACX Rock Creek LLC's Rock Creek Gas Plant site (IACX Rock Creek Gas Plant); 3) Orion Engineered Carbons LLC's Borger Carbon Black Plant site (Orion Borger Carbon Black Plant); 4) Phillips 66 Company's Borger Refinery site (P66 Borger Refinery); 5) Tokai Carbon CB LTD's Borger Carbon Black Plant site (Tokai Borger Carbon Black Plant); 6) Agrium US LLC's Borger Nitrogen Operations site (Agrium Borger Nitrogen Plant); 7) Borger Energy Associates LP's Blackhawk Power Plant site (Blackhawk Power Plant); and 8) Solvay Specialty Polymers USA LLC's Solvay Specialty Polymers USA site (Solvay Specialty Polymers Plant). The CP Chem Borger Plant manufactures specialty chemicals and plastics with other various industrial applications. The IACX Rock Creek Gas Plant is a natural gas gathering plant. The Orion Borger Carbon Black Plant manufactures carbon black for use in various industrial applications, such as tires. The P66 Borger Refinery processes primarily medium sour crude oil and natural gas oil. The Tokai Borger Carbon Black Plant manufactures carbon black for use in various industrial applications, such as tires. The Agrium Borger Nitrogen Plant is a fertilizer plant. The Blackhawk Power Plant generates electricity using natural gas and steam using refinery gas from the P66 Borger Refinery. The Solvay

Specialty Polymers Plant is a plastics and resins plant on the Chevron Phillips Chemical property that operates independently from Chevron Phillips Chemical. The first five sites with SO<sub>2</sub> emissions are covered in Subchapter F. The other three sites are not included in the rules because attainment demonstration modeling showed their emissions do not exceed the SIL.

The Navarro County SO<sub>2</sub> nonattainment area designated by the EPA consists of a portion of Navarro County. The Streetman Plant owned and operated by Arcosa LWS, LLC (Arcosa Streetman Plant), is the only site with SO<sub>2</sub> emissions in the nonattainment area. The Streetman Plant manufactures lightweight aggregate for use in various industrial applications, such as concrete and asphalt, and is the site covered in Subchapter G.

#### Section by Section Discussion

### *SUBCHAPTER E: REQUIREMENTS IN THE HOWARD COUNTY NONATTAINMENT AREA*

#### *DIVISION 1: REQUIREMENTS FOR THE DELEK BIG SPRING REFINERY*

##### *§112.100, Applicability*

The commission proposes new §112.100 to specify that the new rules apply to sources of SO<sub>2</sub> at the Delek Big Spring Refinery site (RN100250869) whose emissions the agency has determined contribute to potential exceedances of the 2010 SO<sub>2</sub> NAAQS based on modeling conducted for the concurrently proposed SIP revisions discussed elsewhere in this preamble. The specific sources at the site that modeling shows contribute above the SIL are specified as being subject to the proposed rules. The rule provisions in the new proposed Division 1 are site-specific and unit-specific and are specified by the Regulated Entity Number (RN) of the site, and EPN as documented in a specified version of the New Source Review (NSR) permit. The source name and EPN used in attainment demonstration modeling is used in the rules for sources to be authorized and constructed after this proposed rulemaking. The requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

The TCEQ conducted attainment demonstration modeling for sources in the Howard County nonattainment area using either the allowable emission limits (including during both normal operations and, when applicable, authorized MSS activities) from the NSR permit(s) for each site, or lower emission rates if needed to demonstrate attainment. The lower emission rates were used in the attainment demonstration modeling, which also used stack parameters supplied by the companies for each emissions point where SO<sub>2</sub> is emitted. Modeling was conducted to determine which specific sources would have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 micrograms per cubic meter) to the modeled design value concentrations in the Howard County SO<sub>2</sub> nonattainment area. If the source had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the source had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, and evaluated using a Monte Carlo simulation statistical approach, the emission rates specified in the rule resulted in modeled design values that demonstrated attainment of the NAAQS. Monte Carlo methods are statistical simulation techniques used to estimate possible outcomes from uncertain events by repeatedly calculating an outcome, in this case the modeled design value, by randomly selecting from a

set of possible scenarios, in this case emission rates for sources in the nonattainment area, for each calculation.

#### §112.101, Definitions

The commission proposes new §112.101 to define three terms used in Division 1. The commission proposes new §112.101(1) to define block one-hour average which is used in the requirements. Proposed new §112.101(2) defines the Howard County SO<sub>2</sub> nonattainment area. Proposed new §112.101(3) defines pipeline quality natural gas.

#### §112.102, Control Requirements

The commission proposes new §112.102 to specify the control requirements for the sources (designated through the relevant EPN) that were identified in §112.100. The emission rates established in the section are the rates that modeling demonstrates attainment in the concurrently proposed SIP revision for Howard County.

Proposed new §112.102(a) prohibits the owner or operator from contravening the control requirements specified in these rules by changing the site's RN or the EPN designation of any source without prior approval by the agency and the EPA. This prohibition is needed because the proposed rules specify the requirements for existing individual sources or groups of sources based on their EPN designation in a specific version of the applicable NSR permit issued on a specified date, so the designations must remain the same unless changes are approved by the commission and the EPA.

Proposed new §112.102(b) provides the emission limits for the fluidized catalytic cracking unit (FCCU), currently designated as FCCU ESP Stack EPN 06ESPPCV in NSR Permit 49154. Permit 49154 currently has an emission limit of 669.90 pounds per hour (lb/hr) SO<sub>2</sub> for the FCCU (EPN 06ESPPCV). Delek US Holdings has committed to reducing the FCCU maximum limit to 250.00 lb/hr on a seven-day rolling average. This number was determined by applying a discount factor to 280.90 lb/hr, which was the number used in the attainment demonstration modeling. Delek submitted 2017 through 2020 FCCU continuous emissions monitoring system (CEMS) emissions data to support their conclusion that it is equivalent to 280.90 lb/hr SO<sub>2</sub> on a one-hour average basis. The 2014 SO<sub>2</sub> SIP guidance recognized that establishing one-hour limits based on the modeled critical emission value (CEV) may be overly conservative because short term periods of emissions above the CEV have an extremely low likelihood of causing a NAAQS exceedance. The CEV is defined as the one-hour SO<sub>2</sub> emissions limit that shows attainment of the 2010 SO<sub>2</sub> NAAQS through modeling. The 2014 SO<sub>2</sub> SIP guidance included a recommended approach to determine an appropriate longer-term averaging limit than a block one-hour emission rate. This approach involves calculating an appropriate longer-term averaging limit as a percentage of the one-hour CEV limit. The TCEQ used the 280.90 lb/hr SO<sub>2</sub> one-hour average emission limit value in the concurrently proposed attainment demonstration modeling to prove that the emission limit value is not expected to result in exceedances of the 2010 SO<sub>2</sub> NAAQS. For the FCCU, the proposed rule has a 250.00 lb/hr SO<sub>2</sub> emission limit on a seven-day rolling average. Delek provided technical data concerning hourly mass SO<sub>2</sub> emissions from the FCCU at the Big Spring Refinery. The historical emissions data submitted for each operating hour of the FCCU were used for the emissions variability analysis to arrive at a final SO<sub>2</sub> emissions limit on a seven-day rolling average. Specifically, the 99th percentile of the one-hour pounds

per hour data was obtained as well as the 99th percentile of the seven-day rolling average pounds per hour data. The ratio of the 99th percentile of the seven-day rolling average data to the 99th percentile of the one-hour data was then calculated to develop a discount factor to be applied to the one-hour critical emission value (CEV) limit to arrive at the final limit that provides for a longer averaging time basis. The final discount factor for the pounds per hour emissions limit representing the modeled one-hour CEV was determined to be 0.89. The discount factor is expected to provide a degree of comparable stringency to the corresponding limit on a one-hour basis. The emission rate calculated using the discount factor is expected to constrain emissions from the FCCU so that any occasions of emissions above the CEV will be limited in frequency and magnitude. The use of variability analysis and application of a corresponding discount factor to provide for an emission limit with a longer averaging time is recognized by EPA guidance as appropriate where sources have variable hourly emissions due to factors such as fuel sulfur content, variable operating loads, etc.

Proposed new §112.102(c) limits the fuel and waste gas sulfur content limits for the flares. Proposed new §§112.102(d) - (g) include emission limits for the four flares during both normal operations and authorized MSS activities. The SO<sub>2</sub> emission limits for normal operations are as follows: 25.00 lb/hr for Northeast Flare (EPN 14NEASTFLR), 51.80 lb/hr for the Crude Flare (EPN 02CRUDEFLR), 103.70 lb/hr for the Reformer Flare (EPN 05REFMFLR), and 118.70 lb/hr for the South Flare (EPN 16SOUTHFLR). The MSS emission limits are based on the maximum number of days per year emissions can fall into specified ranges for each flare during authorized MSS activities. Limits on the number of days per year flaring events could generate specified amounts of emissions were needed to demonstrate attainment and were tested in the Monte Carlo demonstration in the associated concurrently proposed attainment demonstration. The rule specifies emissions limits for each flare during authorized MSS activities, for the specified number of days and corresponding emission range. The emission limit ranges with the associated number of days allowed for each flare are 1) the Northeast Flare (EPN 14NEASTFLR) can emit SO<sub>2</sub> in the following ranges: 25.01 lb/hr or more but less than 250.01 lb/hr for no more than four calendar days each year; 250.01 lb/hr or more but less than 500.01 lb/hr for no more than six calendar days each year; and 500.01 lb/hr or more but less than 1,500.01 lb/hr for no more than two calendar days each year; 2) the Crude Flare (EPN 02CRUDEFLR) can emit SO<sub>2</sub> in the following ranges: 51.81 lb/hr or more but less than 250.01 lb/hr for no more than 14 calendar days each year, and can operate in the range of 250.01 lb/hr or more but less than 750.01 lb/hr for no more than three calendar days each year; 3) the Reformer Flare (EPN 05REFMFLR) can emit SO<sub>2</sub> in the following ranges: 103.71 lb/hr or more but less than 250.01 lb/hr for no more than four calendar days each year, and can operate in the range of 250.01 lb/hr or more but less than 750.01 lb/hr for no more than five calendar days each year; and 4) the South Flare (EPN 16SOUTHFLR) can emit SO<sub>2</sub> in the following ranges: 118.71 lb/hr or more but less than 250.01 lb/hr for no more than four calendar days each year, can operate in the range of 250.01 lb/hr or more but less than 500.01 lb/hr for no more than 12 calendar days each year, and can operate in the range of 500.01 lb/hr or more but less than 1,696.01 lb/hr for no more than two calendar days each year. For each source, there is also a prohibition on emissions above the highest emission rate in the final range because attainment demonstration modeling shows that emissions above these levels may contribute to an exceedance of the 2010 SO<sub>2</sub> NAAQS. In the case that emis-

sions fall within more than one range in different hours of a day, the allowable number of days per year would be based on the highest emission rate of the day.

These MSS emission rate range limits and allowable number of days were tested in the Monte Carlo demonstration by identifying the possible combinations of emission occurrences and conducting 2.5 million modeling runs to demonstrate that these potential MSS scenarios would not create an exceedance of the 2010 one-hour SO<sub>2</sub> NAAQS. The above alternative emissions and associated duration limits for MSS scenarios begin just above the routine emission limit and increase sequentially through the maximum limit. Each alternative emission limit allows for emissions within the specified range for the specified number of calendar days, with a provision for each flare that if emissions within different ranges occur during a calendar day, only the highest emission rate is used to determine the emission rate range that applies for that day. The range applicable to a specific day is based on the maximum hourly rate during that day, with the highest emission rate applying.

The commission proposes in new §112.102(h) and (i) to limit SRU Incinerator 1 (EPN 69TGINC) to 17.03 lb/hr SO<sub>2</sub> and limit SRU Incinerator 2 (EPN 71TGINC) to 12.78 lb/hr SO<sub>2</sub>.

Proposed new §112.102(j) allows the owner or operator to request an alternative SO<sub>2</sub> emission limit. The owner or operator must conduct and submit dispersion modeling and analysis that includes the requested new limit and all the inputs in the most recent attainment demonstration SIP. Any deviations from the modeling methodology used in the most recent attainment demonstration must be explained and approved by the executive director of the TCEQ and the EPA. The modeling and additional analyses must confirm the modeled regulatory design value in the nonattainment area will not increase due to the new limit. The request must also include any additional monitoring, testing, and recordkeeping requirements necessary to demonstrate compliance with the requested new limit. The owner or operator would only be allowed to comply with the alternative limit if the request is approved by both the TCEQ and the EPA. The commission solicits comments on whether an additional mechanism to request alternative SO<sub>2</sub> emission limits, similar to the alternate means of control (AMOC) provisions 30 TAC Chapter 115, Subchapter J, Division 1, would be appropriate to include in Subchapter F. AMOC provisions in Chapter 112 could be used to establish an intraplant trading program that would allow for an increase in the emission limit at one emission point in exchange for an equal or greater decrease in emission limits at one or more EPNs at the same site. Comments regarding such a program should address the enforceability of any changes made under the program, monitoring, recordkeeping, reporting, and testing requirements, modeling to ensure NAAQS protectiveness, TCEQ and EPA review procedures, and public participation.

#### *§112.103, Monitoring Requirements*

The commission proposes new §112.103 to specify the monitoring required for each affected source identified as subject to these rules in §112.100. The proposed monitoring requirements are necessary to demonstrate that the control requirements in §112.102 for that source are met. Proposed new §112.103 provides the monitoring requirements for sources at the Big Spring Refinery. Proposed new §112.103(1) requires a CEMS unit must be used, calibrated, and maintained for the FCCU in compliance with federal regulations to record emissions at least every 15 minutes so that a block one-hour average can be calculated from the data. Proposed new §112.103(2) requires determining

each flare's inlet stream flow rate and total sulfur concentration according to 40 Code of Federal Regulations (CFR) §60.107a(e) monitoring procedures and specifications. Proposed new §112.103(3) requires the use, calibration, and maintenance of CEMS units for the SRU incinerators to record emissions at least every 15 minutes so that a block one-hour average can be calculated from the data. Proposed new §112.103(4) requires the use of an appropriate quality assurance and quality control (QA/QC) process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emission point.

#### *§112.104, Testing Requirements*

The commission proposes new §112.104 to specify the testing required for fuels, raw materials, and each source identified as subject to these rules in §112.100 to comply with the monitoring requirements in proposed new §112.103. Proposed new §112.104 provides the testing requirements for sources at the Big Spring Refinery, including performance tests on sources subject to Division 1. Proposed new §112.104(1) requires performing relative accuracy tests per federal requirements for CEMS at the refinery. Proposed new §112.104(2) requires flow rate and sulfur monitoring instrumentation for flares to undergo the initial operational and calibration tests in accordance with the manufacturer's specifications, so measurement data could be relied upon to produce an accurate compliance demonstration by the deadline required in §112.108. Proposed new §112.104(3) requires that additional performance testing be conducted according to federal requirements if requested by the executive director.

#### *§112.105, Approved Test Methods*

The commission proposes new §112.105 to specify the test methods required to comply with the testing requirements in proposed new §112.104. The test methods relate to the testing requirements in proposed new §112.104. Proposed new §112.105(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used except as provided in 40 CFR §60.8(b).

Proposed new §112.105(b) specifies the test methods to be used for testing the sulfur content of fuels. Proposed new §112.105(c) provides the test method for testing the sulfur content in exhaust gases at the Big Spring Refinery. Proposed new §112.105(d) allows the use of alternate methods after approval by the executive director and the EPA. This provision is intended to also allow the approval of minor changes to the cited methods.

#### *§112.106, Recordkeeping Requirements*

The commission proposes new §112.106 to specify the records required to be maintained. Records are required to be kept for a minimum of five years. The records include all monitoring (including CEMS) data and sampling data (including sulfur content), the methods and calculations used to demonstrate compliance, documentation of any SO<sub>2</sub> exceedances, including root cause analyses, and the report submitted for these, and copies of required emission test data and records.

#### *§112.107, Reporting Requirements*

The commission proposes new §112.107(a) to specify the reporting required for each source covered by the rules. The required reports cover any exceedances of SO<sub>2</sub> emission limits and deviations from required stack parameters and must be submitted to the agency no later than March 31 of the year following the

exceedance. The reports must include each occurrence date, an explanation of the exceedance and noncompliance with any required stack parameter, a statement of whether the exceedance or stack parameter noncompliance occurred during an authorized MSS activity for or malfunction of the emitting facility or its control system, the actions taken in response to the exceedance or stack parameter noncompliance and the cause(s), and a certification of the accuracy and completeness of the report. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown and is also subject to the requirements of 30 TAC §101.211. If a reportable quantity (i.e., 500 pounds or more) of SO<sub>2</sub> is released, the provisions of §101.211 also apply, as do the reporting requirements for emission events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Proposed new §112.107(b) requires the owner or operator to submit results of emissions testing for determining compliance with the emission standards of SO<sub>2</sub> specified in proposed new §112.102(c)(1) to the appropriate TCEQ regional office and any local air pollution control agency having jurisdiction within 60 days after testing is complete and not later than the compliance schedule specified in §112.108.

The commission proposes new §112.107(c) as contingency measures if the EPA determines that the Howard County SO<sub>2</sub> nonattainment area does not achieve attainment on or after the attainment date. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in Division 1 and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO<sub>2</sub> source, the wind speed and direction at the monitor with the NAAQS exceedance, and any exceptional events that may have occurred. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

#### *§112.108, Compliance Schedules*

The commission proposes new §112.108 to specify the date by which each source in §112.100 is required to comply with the requirements of Division 1.

#### *Division 2: Requirements for the Tokai Big Spring Carbon Black Plant*

##### *§112.110, Applicability*

For sources in the Tokai Big Spring Carbon Black Plant that had contributions greater than the SIL, the emission rates are specified as an overall emissions cap, a cap for the two dryer stacks and individual limits for the incinerator, flare, and one of the dryer stacks. To ensure that the overall emissions cap at the Tokai Big Spring Carbon Black Plant will continue to model attainment, the TCEQ modeled a total of 192 operating scenarios accounting for different loads and operating conditions. In addition, for the situation where one or more of the Big Spring Refinery's flares are intermittently in authorized MSS activities, multiple iterations of each of the 192 operating scenarios for the Tokai Big Spring

Carbon Black Plant were conducted using a Monte Carlo simulation statistical approach. A Monte Carlo simulation is a statistical technique used to estimate possible outcomes from uncertain events by repeatedly calculating an outcome, in this case the modeled design value, by randomly selecting from a set of possible scenarios, in this case emission rates for sources in the nonattainment area, for each calculation. The emission rates included in the proposed rule modeled attainment under all 192 scenarios across a number of Monte Carlo simulations. Additional information regarding the modeling analysis and determination of the proposed emission rates that demonstrate attainment is available in the concurrently proposed SIP revision for Howard County.

##### *§112.111, Definitions*

The commission proposes new §112.111 to define seven terms used in Division 2. The commission proposes new §112.111(1) to define block one-hour average which is used in the Tokai Big Spring Carbon Black Plant requirements. Proposed new §112.111(2) defines the Howard County SO<sub>2</sub> nonattainment area. Proposed new §112.111(3) defines off-line for carbon black oil furnaces. Proposed new §112.111(4) defines on-line for carbon black oil furnaces as not off-line. The commission proposes new §112.111(5) to define pipeline quality natural gas. The commission proposes new §112.111(6) to define production unit as a combination of equipment used in the manufacture of carbon black at the Tokai Big Spring Carbon Black Plant because the term is used in the proposed rules only for that site, with distinction made between the production units associated with each EPN defined in this rule. Proposed new §112.111(7) defines tail gas for carbon black plants.

##### *§112.112, Control Requirements*

The commission proposes new §112.112 to specify the control requirements for sources (designated through the relevant EPN) that were specified in §112.110. The emission rates established in the section are the rates that modeling shows demonstrate attainment in the concurrently proposed SIP revision for Howard County.

Proposed new §112.112(a) prohibits an owner or operator or any person acting for them from contravening the control requirements specified in these rules by changing the RN or EPN designation of any source without prior approval by the agency and the EPA. This prohibition is needed because the proposed rules specify the requirements for a site based on the RN and for existing individual sources or groups of sources based on their EPN designation in a specific version of the NSR permit, so the designations must remain the same unless changes are approved by the commission and the EPA.

Proposed new §112.112(b) provides the emission limits for sources at the Tokai Big Spring Carbon Black Plant, which has three carbon black production units: Production Unit 1 consists of five furnaces and three dryers; Production Unit 2 consists of four furnaces and two dryers; and Production Unit 3 consists of four furnaces and two dryers. Emissions of SO<sub>2</sub> associated with Production Units 1 and 2 vent through EPN 7A, EPN 13A, or EPN FLARE 4. Emissions of SO<sub>2</sub> associated with Production Unit 3 vent through EPNs12A, EPN 13A, or EPN FLARE 4. Emissions of SO<sub>2</sub> from all dryers associated with Production Units 1 and 2 vent through EPN 7A. Emissions of SO<sub>2</sub> from all dryers associated with Production Unit 3 vent through EPN 12A.

The table in proposed new §112.112(b) provides emission limits for sources at maximum load and at reduced loads and includes

overall emissions caps for all sources that can combust tail gas at the Tokai Big Spring Carbon Black Plant (carbon black dryers, Incinerator + HRSG, and flares) as well as emission limits for the two dryer stacks combined (EPN 7A and EPN 12A), emission limits for one individual dryer stack (EPN 12A), and emission limits for the incinerator or flare (EPN 13A). At the carbon black plant, operation at reduced loads is achieved by taking one or more furnaces off-line, which results in reduced dispersion of emissions and requires lower emission rates and associated stack parameters which could also result in less dispersion. Reduced dispersion results in the SO<sub>2</sub> emissions remaining lower in the atmosphere. To ensure attainment can be demonstrated under all operating conditions, the reduced load operating scenarios were also modeled.

Proposed new §112.112(c) ensures that if the number of furnaces online during any one-hour period changes, the most conservative emission limit will apply during the entire one-hour block period of time, because it requires the fewest number of operating furnaces be used to calculate the applicable reduction coefficient for use in determining the applicable emission limit.

The commission proposes new §112.112(d) to specify that the determination of the maximum emission rate for each EPN for each operational scenario is based on a block one-hour average. The commission proposes new §112.112(e) to prohibit the combustion of tail gas in any source or control device at the carbon black plant for which an allowable SO<sub>2</sub> emission rate is not specified because tail gas is high in sulfur compounds and was not represented in the modeling for other sources. Proposed new §112.112(f) prohibits the use of both the Incinerator + HRSG and Flare 4 during any block one-hour period and proposed new §112.112(g) prohibits the use of Flare 1, Flare 2, or Flare 3 after the compliance date.

The commission proposes new §112.112(h) to specify that the new flare, if authorized, must be designated as EPN FLARE 4, must be constructed at a specific location, and must have a stack height of at least 60.35 meters, consistent with modeled parameters. Proposed new §112.112(i) specifies that the Incinerator + HRSG must have a stack height of at least 65.00 meters, which is higher than the stack currently in place. The attainment demonstration modeling showed that dispersion based on these stack heights was needed to avoid exceeding the NAAQS.

Proposed new §112.112(j) allows the owner or operator to request an alternative SO<sub>2</sub> emission limit. The owner or operator must conduct and submit dispersion modeling and analysis that includes the requested new limit and all the inputs in the most recent attainment demonstration SIP. Any deviations from the modeling methodology used in the most recent attainment demonstration must be explained and approved by the executive director of the TCEQ and the EPA Regional. The modeling and additional analyses must confirm the modeled regulatory design value in the nonattainment area will not increase due to the new limit. The request must also include any additional monitoring, testing, and recordkeeping requirements necessary to demonstrate compliance with the requested new limit. The owner or operator would only be allowed to comply with the alternative limit if the request is approved by both the TCEQ and the EPA. The commission solicits comments on whether an additional mechanism to request alternative SO<sub>2</sub> emission limits, similar to the alternate means of control (AMOC) provisions 30 TAC Chapter 115, Subchapter J, Division 1, would be appropriate to include in Subchapter F. AMOC provisions in Chapter 112 could be used to establish an intraplant trading program that would allow for

an increase in the emission limit at one emission point in exchange for an equal or greater decrease in emission limits at one or more EPNs at the same site. Comments regarding such a program should address the enforceability of any changes made under the program, monitoring, recordkeeping, reporting, and testing requirements, modeling to ensure NAAQS protectiveness, TCEQ and EPA review procedures, and public participation.

#### *§112.113, Monitoring Requirements*

Proposed new equation in §112.113(a) allows calculation of emissions from an individual production unit; and the proposed new equation in §112.113(b) is used to estimate actual emissions rates from each EPN subject to an emission limit under §112.112.

Proposed new §112.113(c) requires the installation, use, calibration, and maintenance of totalizing fuel flow meters for carbon black oil entering each production unit. Proposed new §112.113(d) requires the installation, use, calibration, and maintenance of totalizing fuel flow meters for tail gas for all combustion facilities or control devices using this fuel. Proposed new §112.113(e) requires the use of a continuous monitoring and data acquisition system to continuously measure, calculate, and record the volumetric flow rate of tail gas to Incinerator + HRSG and Flare 4 (EPNs 13A and Flare 4) and to each carbon black dryer associated with EPN 7A and EPN 12A; the total volumetric tail gas flow to all carbon black dryers and to all combustion devices; and the ratios of flows to the dryers versus the total tail gas flow rate. The ratios are used to establish the split coefficients applied to emissions from the production units to estimate the emissions from each stack. The commission proposes §112.113(f) to require that the continuous data acquisition system be installed, calibrated, maintained, and operated in accordance with manufacturer's recommended procedures.

The commission proposes new §112.113(g) to require daily measurement of the sulfur content of carbon black oil feedstock fed to each of the carbon black production units. Proposed new §112.113(h) requires daily measurement of the sulfur content by weight of each grade of carbon black produced from each carbon black production unit. Proposed new §112.113(i) requires the determination of the amount of each grade of carbon black produced in each production unit for each hour. The term "determine" was used instead of "measure" because this number may be calculated from other parameters as opposed to being directly measured as it may be difficult to measure hourly production rates. Proposed new §112.113(j) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

#### *§112.114, Testing Requirements*

The commission proposes new §112.114(a) to require initial demonstration of compliance testing for sources combusting tail gas, except for flares, and proposed new §112.114(b) requires that this testing be done using the test methods in proposed new §112.115. The only flare that will be operational after the compliance date is not required to undergo performance testing because the waste stream to the flare is the same as the stream to the Incinerator + HRSG, which will be tested. Combusting the stream in the flare as opposed to the incinerator + HRSG is not expected to significantly impact the SO<sub>2</sub> emission

rate. Proposed new §112.114(c) specifies that for stack tests the source must be operated as close to its maximum rated capacity as practicable. Proposed new §112.114(d) requires that additional performance testing be done if requested by the executive director using specified federal methods and criteria and the test methods in proposed new §112.115.

#### *§112.115, Approved Test Methods*

The commission proposes new §112.115 to specify the test methods required to comply with the testing requirements in proposed new §112.114. The test methods relate to the testing requirements in proposed new §112.114. Proposed new §112.115(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used except as provided in 40 CFR §60.8(b).

Proposed new §112.115(b) specifies the test methods to be used for testing the sulfur content of fuels and carbon black oil. Because no specific test methods for carbon black oil were identified, the American Society for Testing and Materials (ASTM) test methods for fuels are specified for this material. The commission requests comment on the appropriateness of these methods for these materials or of alternate methods specific to carbon black oil. Proposed new §112.115(c) provides the test method for testing the sulfur content of carbon black product. Proposed new §112.115(d) provides the test method for determining the sulfur content in exhaust gases at the Tokai Big Spring Carbon Black Plant. Proposed new §112.115(e) allows the use of alternate methods after approval by the executive director and the EPA. This provision is intended to also allow the approval of minor changes to the cited methods.

#### *§112.116, Recordkeeping Requirements*

The commission proposes new §112.116 to specify the records required to be maintained for at least five years at the Tokai Big Spring Carbon Black Plant. Proposed new §112.116(1) requires records by production unit of the production rates (as lb/hr) of the different grades of carbon black by each production unit. Proposed new §112.116(2) requires daily records of the sulfur content by weight of the carbon black oil feedstock. Proposed new §112.116(3) requires daily records of the sulfur content by weight of each grade of carbon black produced by each production unit. Proposed new §112.116(4) requires continuous records of flow rates of the carbon black oil feedstock to each production unit. Proposed new §112.116(5) requires continuous records of volumetric flow rates to each tail gas combustion device. Proposed new §112.116(6) requires for each one-hour block of operation of each production unit records of each furnace that operated, the applicable emission limits, and the mass balance calculations for each EPN, including the relevant factors used in the calculations. Proposed new §112.116(7) requires maintaining records of all exceedances of emission limits and standards in the rules and copies of the exceedance reports filed under §112.117. Proposed new §112.116(8) requires maintaining records of all required emissions test data and records.

#### *§112.117, Reporting Requirements*

The commission proposes new §112.117(a) to specify the reporting required for each source covered by the rules. The required reports cover any exceedances of SO<sub>2</sub> emission limits and deviations from required stack parameters; must be submitted to the agency no later than March 31 of the year following the exceedance; and must include each occurrence date, an explanation of the exceedance and noncompliance with any required stack parameter, a statement of whether the exceedance

or stack parameter noncompliance occurred during an authorized MSS activity for or malfunction of the emitting facility or its control system, the actions taken in response to the exceedance or stack parameter noncompliance and the cause(s), and a certification of the accuracy and completeness of the report. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown and is also subject to the requirements of 30 TAC §101.211. If a reportable quantity (i.e., 500 pounds or more) of SO<sub>2</sub> is released, the provisions of §101.211 also apply, as do the reporting requirements for emission events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Proposed new §112.117(b) requires the owner or operator to submit results of emissions testing for determining compliance with the emission standards of SO<sub>2</sub> specified in proposed new §112.112(b) to the appropriate TCEQ regional office and any local air pollution control agency having jurisdiction within 60 days after testing is complete and not later than the compliance schedule specified in §112.118.

The commission proposes new §112.117(c) as contingency measures if the EPA determines that the Howard County SO<sub>2</sub> nonattainment area does not achieve attainment on or after the attainment date. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this division and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO<sub>2</sub> source, the wind speed and direction at the monitor with the NAAQS exceedance, and any exceptional events that may have occurred. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

#### *§112.118, Compliance Schedules*

The commission proposes new §112.118 to specify the date by which each source in §112.110 are required to comply with the requirements of Division 2.

#### *Subchapter F, Requirements in the Hutchinson County Nonattainment Area*

#### *Division 1, Requirements for the Chevron Phillips Chemical Borger Plant*

#### *§112.200, Applicability*

The commission proposes new §112.200 to specify that the new rules apply to sources at the CP Chem Borger Plant (RN102320850) whose emissions the agency has determined contribute to potential exceedances of the 2010 SO<sub>2</sub> NAAQS based on modeling conducted for the concurrently proposed SIP revisions discussed elsewhere in this preamble. The proposed rule provisions in new Division 1 are site-specific and specified by the current name and RN of the site. The proposed rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN



used in attainment demonstration modeling for sources to be authorized and constructed. The proposed requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activity) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment and emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO<sub>2</sub> nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points would have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 micrograms per cubic meter) to the modeled design value concentrations in the Hutchinson County SO<sub>2</sub> nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emission point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

#### *§112.201, Definitions*

The commission proposes new §112.201 to define three terms used in Division 1. The commission proposes new §112.201(1) to define block one-hour average. Proposed new §112.201(2) defines the Hutchinson County SO<sub>2</sub> nonattainment area. Proposed new §112.201(3) defines pipeline quality natural gas.

#### *§112.202, Control Requirements*

Proposed new §112.202(a) prohibits the owner or operator of the CP Chem Borger Plant from contravening the control requirements by changing the EPN designation of any emissions point without prior approval by the agency and the EPA. This prohibition is needed because the proposed rules specify the requirements for existing individual facilities or control devices or groups of facilities and control devices based on their EPN designation in a specific version of the Maximum Allowable Emission Rate Table (MAERT), so the designations must remain the same unless changes are approved by the commission and the EPA.

Proposed new §112.202(b) provides the emission limits for the two sulfolene handling areas. Although the fugitive emissions for sulfolene areas are authorized under the single EPN (F-M2A) in NSR permit 21918, the two areas where the emissions originate were modeled separately and have separate emission rates when modeling attainment. Proposed new §112.202(b)(1) limits the sulfolene building and the trailer in its vicinity (EPN F-M2A\_1 in the modeling) to 1.00 lb/hr SO<sub>2</sub>. Proposed new §112.202(b)(2) limits the trailers in parking area (EPN F-M2A\_2 in the modeling) to 0.98 lb/hr SO<sub>2</sub>. Proposed new §112.202(c) limits the North Flare (EPN FL-1) and South Flare (EPN FL-2) to a combined total of 430.00 lb/hr.

Proposed new §112.202(d) allows the owner or operator to request an alternative SO<sub>2</sub> emission limit. The owner or operator must conduct and submit dispersion modeling and analysis that includes the requested new limit and all the inputs in the

most recent attainment demonstration SIP. Any deviations from the modeling methodology used in the most recent attainment demonstration must be explained and approved by the executive director of the TCEQ and the EPA. The modeling and additional analyses must confirm the modeled regulatory design value in the nonattainment area will not increase due to the new limit. The request must also include any additional monitoring, testing, and recordkeeping requirements necessary to demonstrate compliance with the requested new limit. The owner or operator would only be allowed to comply with the alternative limit if the request is approved by both the TCEQ and the EPA. The commission solicits comments on whether an additional mechanism to request alternative SO<sub>2</sub> emission limits, similar to the alternate means of control (AMOC) provisions 30 TAC Chapter 115, Subchapter J, Division 1, would be appropriate to include in Subchapter F. AMOC provisions in Chapter 112 could be used to establish an intraplant trading program that would allow for an increase in the emission limit at one emission point in exchange for an equal or greater decrease in emission limits at one or more EPNs at the same site. Comments regarding such a program should address the enforceability of any changes made under the program, monitoring, recordkeeping, reporting, and testing requirements, modeling to ensure NAAQS protectiveness, TCEQ and EPA review procedures, and public participation.

#### *§112.203, Monitoring Requirements*

Proposed new §112.203(a) requires the owner or operator of the CP Chem Borger Plant to monitor each hour the temperature inside of trailers on site that contain sulfolene, which decomposes when exposed to heat and is stored in trailers on site prior to transport. The proposed limits are based on new testing conducted at specific temperatures, the limit on temperature improves the ability of the new test to predict actual emissions. The temperature inside the trailers may affect compliance, but there is not a concern for the sulfolene building because it is climate controlled. Significant deviations above the test temperature may require further investigation and action to avoid impact to the attainment demonstration modeling from emissions from the sulfolene handling areas above the emission rate that was modeled.

New proposed §112.203(b) requires the company to monitor separately the sulfur content of gases routed to the North and South Flares (EPN FL-1 and EPN FL-2). The monitors are specified to be analyzers sufficient to quantify hydrogen sulfide at a level of 1 part per million by volume (ppmv). The commission requests public comment on whether the level of accuracy and downtime is appropriate for a monitor for this function. New proposed §112.203(c) requires the company to monitor separately the volumetric flow rate of gases routed to the North and South Flares. The gas flow monitors are required to be totalizing gas flow meters with an accuracy of ±5% that are installed, maintained, calibrated, and operated per the manufacturer's specifications. The commission requests public comment on whether the level of accuracy and downtime is appropriate for a monitor for this function. This data from the monitoring in subsections (b) and (c) allow determination of the SO<sub>2</sub> emissions from the flares. Proposed new §112.203(d) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

There are not specific testing requirements for the CP Chem Borger Plant, and therefore no specific test methods. To maintain consistency in the numbering in the divisions within the proposed new rules, the corresponding sections are skipped in Division 1.

#### *§112.206, Recordkeeping Requirements*

The commission proposes new §112.206 to specify the records required to be maintained. All records are required to be maintained for at least five years. Proposed new §112.206(1) requires that the CP Chem Borger Plant maintain hourly records of the temperature inside each trailer that contains sulfolene, whether the trailer is located near the sulfolene building (modeled as F-M2A\_1) or in the trailer parking area (modeled as F-M2A\_2), and the amount of sulfolene stored in each trailer. For attainment demonstration modeling, the company represented that one trailer is at the sulfolene building and four trailers are in the trailer parking area. The monitoring of temperatures is sufficient to indicate if the maximum temperature of 125 degrees Fahrenheit used in the company's testing is consistent with the maximum temperature that occurs in the trailers containing sulfolene. The company did the testing to establish the emission rates for the sulfolene handling areas that were used in the attainment demonstration modeling to determine the emission rates included in the proposed rules.

Proposed new §112.206(2) requires that the company maintain records of the sulfur content and flow rates of gases sent to the flares as well as the periods of time that each flare was in use. The records of the sulfur content and flow rates of gases sent to the flares and the periods of time that each flare was in use are sufficient to document compliance with the emission limits for each control device.

#### *§112.207, Reporting Requirements*

The commission proposes new §112.207(a) to specify the reporting to TCEQ Region 1 required for the CP Chem Borger Plant if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum the date of and an explanation of each exceedance and noncompliance with any required stack parameter, whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for or a malfunction of the source or control device, the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s), and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO<sub>2</sub> is released, the provisions of §101.211 also apply, as do the reporting requirements for emission events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Proposed new §112.207(b) requires the owner or operator of the CP Chem Borger Plant in Hutchinson County to file the exceedance report in paragraph (a) annually and to include the hourly monitoring of temperatures inside the trailers containing sulfolene, highlighting any periods when the temperature exceeded 125 degrees Fahrenheit. This information will alert TCEQ staff of a possible problem with the testing used to es-

tablish the emission rates used in the attainment demonstration modeling.

The commission proposes new §112.207(c) as contingency measures if the EPA determines that the Hutchinson County SO<sub>2</sub> nonattainment area does not achieve attainment on or after the attainment date. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in Division 1 and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO<sub>2</sub> source, the wind speed and direction at the monitor with the NAAQS exceedance, and any exceptional events that may have occurred. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

#### *§112.208, Compliance Schedule*

The commission proposes new §112.208 to specify the date by which each source identified in §112.200 is required to comply with the requirements of Division 1.

#### *Division 2, Requirements for the IACX Rock Creek Gas Plant*

##### *§112.210, Applicability*

The commission proposes new §112.210 to specify that the new rules apply to sources at the IACX Rock Creek Gas Plant whose emissions the agency has determined contribute to the potential exceedances of the 2010 SO<sub>2</sub> NAAQS based on modeling conducted for the concurrently proposed SIP revisions discussed elsewhere in this preamble. The proposed rule provisions in new Division 2 are site-specific and specified by the current name and RN of the site. The proposed rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for sources to be authorized and constructed. The proposed requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activities) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment and emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO<sub>2</sub> nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points would have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 micrograms per cubic meter) to the modeled design value concentrations in the Hutchinson County SO<sub>2</sub> nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emissions point had a contribution to the modeled design value

that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

#### *§112.211, Definitions*

The commission proposes new §112.211 to define three terms used in Division 2. The commission proposes new §112.211(1) to define block one-hour average. Proposed new §112.211(2) defines the Hutchinson County SO<sub>2</sub> nonattainment area. Proposed new §112.211(3) defines pipeline quality natural gas.

#### *§112.212, Control Requirements*

Proposed new §112.212(a) prohibits the owner or operator of the IACX Rock Creek Gas Plant from contravening the control requirements by changing the EPN designation of any emissions point without prior approval by the agency and the EPA. This prohibition is needed because the proposed rules specify the requirements for existing individual facilities or control devices or groups of facilities and control devices based on their EPN designation in a specific version of the MAERT, so the designations must remain the same unless changes are approved by the commission and the EPA.

Proposed new §112.212(b) prohibits operating the acid gas flare and incinerator at the same time. Emission limits are proposed for the acid gas flare (EPN FLR1) in §112.212(c) as 140.00 lb/hr and the acid gas incinerator (EPN INCIN1) in §112.212(d) as 140.00 lb/hr.

Proposed new §112.212(e) allows the owner or operator to request an alternative SO<sub>2</sub> emission limit. The owner or operator must conduct and submit dispersion modeling and analysis that includes the requested new limit and all the inputs in the most recent attainment demonstration SIP. Any deviations from the modeling methodology used in the most recent attainment demonstration must be explained and approved by the executive director of the TCEQ and the EPA. The modeling and any additional analyses must confirm the modeled regulatory design value in the nonattainment area will not increase due to the new limit. The request must also include any additional monitoring, testing, and recordkeeping requirements necessary to demonstrate compliance with the requested new limit. The owner or operator would only be allowed to comply with the alternative limit if the request is approved by both the TCEQ and the EPA. The commission solicits comments on whether an additional mechanism to request alternative SO<sub>2</sub> emission limits, similar to the alternate means of control (AMOC) provisions 30 TAC Chapter 115, Subchapter J, Division 1, would be appropriate to include in Subchapter F. AMOC provisions in Chapter 112 could be used to establish an intraplant trading program that would allow for an increase in the emission limit at one emission point in exchange for an equal or greater decrease in emission limits at one or more EPNs at the same site. Comments regarding such a program should address the enforceability of any changes made under the program, monitoring, recordkeeping, reporting, and testing requirements, modeling to ensure NAAQS protectiveness, TCEQ and EPA review procedures, and public participation.

#### *§112.213, Monitoring Requirements*

Proposed new §112.213(1) and (2) require the owner or operator of the IACX Rock Creek Gas Plant (RN100216613) to continuously monitor and record the hydrogen sulfide content and flow rate of gases routed to the acid gas incinerator or acid gas flare, which cannot be used at the same time. Based on the company's

request to avoid the need for duplicate monitors, the monitoring is required to occur prior to the point where the piping splits to lead to each control device. The monitor is specified to be an analyzer sufficient to quantify hydrogen sulfide at a level of 1 ppmv. The gas flow monitor is required to be a totalizing gas flow meter with an accuracy of ±5% that is installed, maintained, and calibrated per the manufacturer's specifications. Proposed new §112.213(3) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

There are no specific testing requirements for the IACX Rock Creek Gas Plant, and therefore no specific test methods. To maintain consistency in the numbering in the divisions within the proposed new rules, the corresponding sections are skipped in Division 2.

#### *§112.216, Recordkeeping Requirements*

The commission proposes new §112.216 to specify the records required to be maintained. All records are required to be maintained for at least five years. Proposed new §112.216 requires that the IACX Rock Creek Gas Plant maintain records of the continuous monitoring of sulfur content and flow rates of gases sent to the acid gas incinerator and flare and of which control device was in use. These records are sufficient to document compliance with the emission limits for each control device.

#### *§112.217, Reporting Requirements*

The commission proposes new §112.217(a) to specify the reporting to TCEQ Region 1 required from the owner or operator of the IACX Rock Creek Gas Plant if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum the date of and an explanation of each exceedance and noncompliance with any required stack parameter, whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for or a malfunction of the source or control device, the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s), and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO<sub>2</sub> is released, the provisions of §101.211 also apply, as do the reporting requirements for emission events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

The commission proposes new §112.217(b) as contingency measures if the EPA determines that the Hutchinson County SO<sub>2</sub> nonattainment area does not achieve attainment on or after the attainment date. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this division and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a

minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO<sub>2</sub> source, the wind speed and direction at the monitor with the NAAQS exceedance, and any exceptional events that may have occurred. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

#### §112.218, *Compliance Schedule*

The commission proposes new §112.218 to specify the date by which each source identified in §112.210 is required to comply with the requirements of Division 2.

#### *Division 3, Requirements for the Orion Borger Carbon Black Plant*

##### §112.220, *Applicability*

The commission proposes new §112.220 to specify that the new rules apply to sources at the Orion Borger Carbon Black Plant (RN100209659) whose emissions the agency has determined contribute to the potential exceedances of the 2010 SO<sub>2</sub> NAAQS based on modeling conducted for the concurrently proposed SIP revisions discussed elsewhere in this preamble. The proposed rule provisions in new Division 3 are site-specific and specified by the current name and RN of the site. The proposed rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for sources to be authorized and constructed. The proposed requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activities) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment and emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO<sub>2</sub> nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points would have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 micrograms per cubic meter) to the modeled design value concentrations in the Hutchinson County SO<sub>2</sub> nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emissions point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

##### §112.221, *Definitions*

The commission proposes new §112.221 to define five terms used in Division 3. The commission proposes new §112.221(1) to define block one-hour average. Proposed new §112.221(2) defines the Hutchinson County SO<sub>2</sub> nonattainment area. Proposed new §112.221(3) defines pipeline quality natural gas, which is used throughout proposed new rules. Proposed new

§112.221(4) defines production unit, which is used throughout the provisions for the two carbon black plants. Proposed new §112.111(5) defines tail gas, which is used throughout the provisions for the carbon black plant.

##### §112.222, *Control Requirements*

Proposed new §112.222(a) prohibits the owner or operator of the Orion Borger Carbon Black Plant from contravening the control requirements by changing the EPN designation of any emissions point without prior approval by the agency and the EPA. This prohibition is needed because the proposed rules specify the requirements for existing individual facilities or control devices or groups of facilities and control devices based on their EPN designation in a specific version of the MAERT, so the designations must remain the same unless changes are approved by the commission and the EPA.

Proposed new §112.222(b) provides SO<sub>2</sub> emission limits on a block one-hour average for the Waste Heat Boiler - CDS Stack (EPN E-6BN) at 144.11 lb/hr and the new Combined Flare (EPN CFL) at 750.05 lb/hr. Proposed new §112.222(c) prohibits combusting tail gas in any source without an emission rate in subsection (b). The Orion Borger Carbon Black Plant's consent decree with the EPA limits flares to periods when the Waste Heat Boiler - CDS Stack is not in operation. Upon the compliance date of the proposed rules, the use of the Unit 1 Reactor/Flare (EPN E-10FL), Unit 2 Reactor/Flare (EPN-20FL), and Unit 4 Reactor/Flare (EPN E-40FL) are prohibited by proposed new §112.222(d). In addition, proposed new §112.222(e) prohibits flaring after the compliance date in proposed new §112.228 if the new Combined Flare is not authorized and constructed. If authorized and constructed, the Combined Flare would be required to be used in place of the other three flares under proposed new §112.222(f)(1). Proposed new §112.222(f)(2) specifies that the Combined Flare is prohibited from operating when the Waste Heat Boiler - CDS Stack is operating. Proposed new §112.222(f)(3) specifies a minimum stack height of 65.00 meters for the Combined Flare and the specific location where it must be located.

Proposed new §112.222(g) allows the owner or operator to request an alternative SO<sub>2</sub> emission limit. The owner or operator must conduct and submit dispersion modeling and analysis that includes the requested new limit and all the inputs in the most recent attainment demonstration SIP. Any deviations from the modeling methodology used in the most recent attainment demonstration must be explained and approved by the executive director of the TCEQ and the EPA. The modeling must confirm the modeled regulatory design value in the nonattainment area will not increase due to the new limit. The request also needs to include any additional monitoring, testing, and recordkeeping requirements necessary to demonstrate compliance with the requested new limit. The owner or operator would only be allowed to comply with the alternative limit if the request is approved by both the TCEQ and the EPA. The commission solicits comments on whether an additional mechanism to request alternative SO<sub>2</sub> emission limits, similar to the alternate means of control (AMOC) provisions 30 TAC Chapter 115, Subchapter J, Division 1, would be appropriate to include in Subchapter F. AMOC provisions in Chapter 112 could be used to establish an intraplant trading program that would allow for an increase in the emission limit at one emission point in exchange for an equal or greater decrease in emission limits at one or more EPNs at the same site. Comments regarding such a program should address the enforceability of any changes made under the program, monitor-

ing, recordkeeping, reporting, and testing requirements, modeling to ensure NAAQS protectiveness, TCEQ and EPA review procedures, and public participation.

#### *§112.223, Monitoring Requirements*

Proposed new §112.223(a) provides the monitoring requirements for sources at the Orion Borger Carbon Black Plant. The commission proposes new §112.223(1) to require the use of a CEMS for the Waste Heat Boiler - CDS Stack, as required under the Orion Borger Carbon Black Plant's consent decree with the EPA, which must be operated in accordance with specified federal requirements in 40 CFR Part 60. Proposed §112.223(b) requires the collection of data to be used to perform calculations to determine the amount of carbon black emitted from the flare when the flare is in operation. The mass balance need only be performed on days the flare is in use because the only other stack the sulfur could be emitted from is the Waste Heat Boiler - CDS Stack which has a CEMS to monitor emissions. Proposed new §112.223(b)(1) requires daily monitoring of the sulfur content by weight of carbon black oil feedstock. Proposed new §112.223(b)(2) requires daily measurements of the sulfur content of each grade of carbon black produced by each carbon black production unit. Proposed new §112.223(b)(3) requires hourly measurements of the amount of each grade of carbon black produced by each carbon black production unit. Proposed new §112.223(c) requires the installation, calibration, and maintenance of a totalizing fuel flow meter for each carbon black furnace to continuously measure the feed rate of carbon black oil within an accuracy of 5%. Proposed new §112.223(d) requires the installation, calibration, and maintenance of a totalizing tail gas flow meter for each carbon black combustion device to continuously measure the flow of tail gas within an accuracy of 5%. Proposed new §112.223(e) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point. Proposed new §112.223(f) requires demonstrating compliance for the new Combined Flare (EPN CFL) by calculating actual hourly emissions via the mass balance equation in §112.223(h). Proposed new §112.223(g) requires calculating emissions from the affected EPNs for each operational scenario as a block one-hour average. Proposed new §112.223(h) provides the equation for calculating SO<sub>2</sub> emissions from each production unit.

#### *§112.224, Testing Requirements*

The commission proposes new §112.224 to specify the testing required for fuels, raw materials, produced carbon black and monitoring equipment used measure sulfur content of exhaust gas or the sulfur content at the inlet of the flares for sources at the Orion Borger Carbon Black Plant. Proposed new §112.224(a) requires that any performance testing be conducted with the facility operating as near as practicable to its maximum rated capacity. Proposed new §112.224(b) requires that any stack tested requested by the executive director be conducted using test methods in §112.225. Proposed new §112.224(c) specifies that when analysis of carbon black, carbon black oil, and fuels is required by this division, the test methods in proposed new §112.225 must be used.

#### *§112.225, Approved Test Methods*

The commission proposes new §112.225 to specify the test methods required to comply with the testing requirements in proposed new §112.224. Proposed new §112.225(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used for stack testing required for the Orion Borger Carbon Black Plant unless an alternate test method is approved by the EPA. Proposed new §112.225(b) specifies that testing of exhaust gases subject to Division 3 must be done using EPA Test Method 6 or 6C. Proposed new §112.225(c) specifies the test methods to be used for testing flare compliance. Proposed new §112.225(d) specifies the test methods to be used for analyzing fuels and carbon black oil for sulfur content. Proposed new §112.225(e) specifies the test method for carbon black at both carbon black plants. Proposed new §112.225(f) allows the use of alternate methods after approval by the executive director and the EPA.

#### *§112.226, Recordkeeping Requirements*

The commission proposes new §112.226 to specify the records required to be maintained by the Orion Borger Carbon Black Plant. All records are required to be maintained for at least five years. Proposed new §112.226(1) requires records of the amounts (in units of lb/hr) of each grade of carbon black produced by each production unit. Proposed new §112.226(2) requires daily records of the sulfur content by weight of the carbon black oil feedstock. Proposed new §112.226(3) requires daily records of the sulfur content by weight of each grade of carbon black produced by each production unit. Proposed new §112.226(4) requires continuous records of carbon black oil flow rates to each production unit. Proposed new §112.226(5) requires continuous records of tail gas volumetric flow rates to each combustion device covered by proposed new §112.222. Proposed new §112.226(6) requires hourly records of each carbon black furnace on-line during a block one-hour period and of the mass balance calculations for each source operating without a CEMS. Proposed new §112.226(7) requires records of the continuous emissions monitoring data from each CEMS. Proposed new §112.226(8) requires copies of required emissions test data and records be maintained.

#### *§112.227, Reporting Requirements*

The commission proposes new §112.227(a) to specify the reporting to TCEQ Region 1 required from the Orion Borger Carbon Black Plant if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum the date of and an explanation of each exceedance and noncompliance with any required stack parameter, whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for or a malfunction of the source or control device, the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s), and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO<sub>2</sub> is released, the provisions of §101.211 also apply, as do the reporting requirements for emission events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Proposed new §112.227(b) requires the owner or operator of the Orion Borger Carbon Black Plant to submit within 60 days of testing the results of emissions testing for determining compliance with the emission standards of SO<sub>2</sub> to the TCEQ Office of Compliance and Enforcement, the appropriate TCEQ regional office, and any local air pollution control agency having jurisdiction.

The commission proposes new §112.227(c) as contingency measures if the EPA determines that the Hutchinson County SO<sub>2</sub> nonattainment area does not achieve attainment on or after the attainment date. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this division and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO<sub>2</sub> source, the wind speed and direction at the monitor with the NAAQS exceedance, and any exceptional events that may have occurred. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

#### §112.228, *Compliance Schedule*

The commission proposes new §112.228 to specify the date by which each source identified in §112.220 is required to comply with the requirements of Division 3.

#### *Division 4, Requirements for the Phillips 66 Refinery*

##### §112.230, *Applicability*

The commission proposes new §112.230 to specify that the new rules apply to sources at the Phillips 66 Refinery whose emissions the agency has determined contribute to potential exceedances of the 2010 SO<sub>2</sub> NAAQS based on modeling conducted for the concurrently proposed SIP revisions discussed elsewhere in this preamble. The proposed rule provisions in new Division 4 are site-specific and specified by the current name and RN of the site. The proposed rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for sources to be authorized and constructed. The proposed requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activities) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment and emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO<sub>2</sub> nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points would have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 micrograms per cubic meter) to the modeled design value concentra-

tions in the Hutchinson County SO<sub>2</sub> nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emissions point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

##### §112.231, *Definitions*

The commission proposes new §112.231 to define three terms used in Division 4. The commission proposes new §112.231(1) to define block one-hour average. Proposed new §112.231(2) defines the Hutchinson County SO<sub>2</sub> nonattainment area. Proposed new §112.231(3) defines pipeline quality natural gas, which is used throughout proposed new rules.

##### §112.232, *Control Requirements*

Proposed new §112.232(a) prohibits the owner or operator of the Phillips 66 Refinery from contravening the control requirements by changing the EPN designation of any emissions point without prior approval by the agency and the EPA. This prohibition is needed because the proposed rules specify the requirements for existing individual facilities or control devices or groups of facilities and control devices based on their EPN designation in a specific version of the NSR Permit, so the designations must remain the same unless changes are approved by the commission and the EPA.

Proposed new §112.232(b) limits EPN 3411 (SRU Incinerator) emissions to 44.82 pounds lb/hr SO<sub>2</sub> during normal operations. Proposed new §112.232(c) limits EPN 4311 (SCOT Unit Incinerator) emissions to 37.00 lb/hr SO<sub>2</sub> during normal operations. Proposed new §112.232(d) prohibits simultaneous operation of EPN 3411 and EPN 4311 during authorized MSS activities and limits the combined emissions from these units to 94.00 lb/hr during authorized MSS activities. Proposed new §112.232(e) specifies a sulfur content limit of 162 ppmv as hydrogen sulfide for fuel and waste gases sent to any flare. Proposed new §112.232(f) provides emissions caps for four flares of 100.14 lb/hr during routine operations and 850.00 lb/hr during authorized MSS activities; these caps were represented in the attainment demonstration modeling as EPN FLARE\_R\_CAP and EPN FLARE\_MS\_CAP, respectively. Proposed new §112.232(g) provides an emissions cap for one flare (EPN 66FL13), the two SRU incinerators (EPN 3411 and 4311), and 44 EPNs for small sources (engines, heaters, and boilers) of 185.69 lb/hr during routine operations; this emissions cap was represented in the attainment demonstration modeling as EPN Flex\_R\_CAP. Proposed new §112.232(h) provides an emissions cap for the same flare and 44 EPNs for small facilities (but not the SRU incinerators) of 106.05 lb/hr during authorized MSS activities; this emissions cap was represented in the attainment demonstration modeling as EPN Flex\_MS\_CAP.

In proposed new §112.232(i)(1) and (2), respectively, the emission limit for the FCCU (EPN 29P1) is set at 155.49 lb/hr for routine operations and during authorized MSS activities when the exhaust flow rate is at least 210,922.60 actual cubic meters per hour (am<sup>3</sup>/hr). In §112.232(1)(3), an emission limit of 140.00 lb/hr is provided for authorized MSS activities when the flow rate is greater than or equal to 158,191.95 am<sup>3</sup>/hr and less than 210,922.60 am<sup>3</sup>/hr. In §112.232(i)(4), an emission limit of 130.00 lb/hr is provided for authorized MSS activities when the flow rate is greater than or equal to 105,461.30 am<sup>3</sup>/hr and less

than 158,191.95 am<sup>3</sup>/hr. In proposed new §112.232(i)(5), exhaust flow rates below 105,461.30 am<sup>3</sup>/hr are prohibited.

In proposed new §112.232(j)(1) and (2), respectively, the emission limit for the FCCU (EPN 40P1) is set at 155.49 lb/hr for routine operations and during authorized MSS activities when the exhaust flow rate is at least 298,242.71 am<sup>3</sup>/hr. In proposed new §112.232(j)(3), an emission limit of 140.00 lb/hr is provided for authorized MSS activities when the flow rate is greater than or equal to 223,682.03 am<sup>3</sup>/hr and less than 298,242.71 am<sup>3</sup>/hr. In proposed new §112.232(j)(4), an emission limit of 130.00 lb/hr is provided for authorized MSS activities when the flow rate is greater than or equal to 149,121.36 am<sup>3</sup>/hr and less than 223,682.03 am<sup>3</sup>/hr. In proposed new §112.232(b)(6)(E), exhaust flow rates below 149,121.36 am<sup>3</sup>/hr are prohibited.

Proposed new §112.232(k) requires the emission limits in this section be calculated on a block one-hour average basis. Proposed new §112.232(l) allows the owner or operator to request an alternative SO<sub>2</sub> emission limit. The owner or operator must conduct and submit dispersion modeling and analysis that includes the requested new limit and all the inputs in the most recent attainment demonstration SIP. Any deviations used in the modeling methodology from the most recent attainment demonstration must be explained and approved by the executive director of the TCEQ and the EPA. The modeling and additional analyses must confirm the modeled regulatory design value in the nonattainment area will not increase due to the new limit. The request also needs to include any additional monitoring, testing, and recordkeeping requirements necessary to demonstrate compliance with the requested new limit. The owner or operator would only be allowed to comply with the alternative limit if the request is approved by both the TCEQ and the EPA. The commission solicits comments on whether an additional mechanism to request alternative SO<sub>2</sub> emission limits, similar to the alternate means of control (AMOC) provisions 30 TAC Chapter 115, Subchapter J, Division 1, would be appropriate to include in Subchapter F. AMOC provisions in Chapter 112 could be used to establish an intraplant trading program that would allow for an increase in the emission limit at one emission point in exchange for an equal or greater decrease in emission limits at one or more EPNs at the same site. Comments regarding such a program should address the enforceability of any changes made under the program, monitoring, recordkeeping, reporting, and testing requirements, modeling to ensure NAAQS protectiveness, TCEQ and EPA review procedures, and public participation.

#### *§112.233, Monitoring Requirements*

Proposed new §112.233 provides the monitoring requirements for sources at the P66 Borger Refinery, including but not limited to two FCCUs, two SRU Incinerators, and flares. Proposed new §112.233(a) and (b) require CEMS units for the FCCUs and SRU incinerators, respectively, along with the federal requirements for 40 CFR Part 60 Subpart Ja that apply to the CEMS units. In addition to all four CEMS recording hourly SO<sub>2</sub> emissions, the FCCU CEMS units are required to record the exhaust gas flow rates to monitor the different emission rate levels in §112.232(i) and (j); consistent with the emission rates, the flow rates are to be recorded as block one-hour averages. Proposed new §112.233(c) requires determining each of the five flares' inlet stream flow rate and total sulfur concentration according to 40 CFR §60.107a(e) monitoring procedures and specifications. Proposed new §112.233(d) requires continuous monitoring of the flow rate and sulfur content of fuels, waste gases, and other materials routed to each of the combustion

units included in either or both of the emission rate caps in proposed new §112.230(6) and (7) and designated as Flex\_R\_CAP and Flex\_MS\_CAP in the attainment demonstration modeling. Proposed new §112.233(e) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

#### *§112.234, Testing Requirements*

Proposed new §112.234 provides the testing and related notification requirements for sources at the P66 Borger Refinery. Proposed new §112.234(a) specifies the relative accuracy tests for the CEMS units required for monitoring in proposed new §112.233 must be conducted using the federal provisions and schedules in 40 CFR §105a(g)(2) for CEMS on the FCCU and in §60.106a(1)(iii) for CEMS on the SRUs. Proposed new §112.234(b) requires performing initial testing of monitoring devices for combustion units and flares in accordance with the manufacturer's specifications so that the monitors are calibrated and function properly by the compliance date. Proposed new §112.234(c) requires that any additional performance testing requested by the executive director be conducted according to specified federal requirements in 40 CFR §104a and using the test methods in §112.235; the paragraph also specifies that the notification requirements in 40 CFR §60.8(d) apply to all performance tests except those conducted for continuous monitoring system maintenance or calibrations. Proposed new §112.234(d) specifies that when analysis of fuels is required by this division, the test methods in proposed new §112.235 must be used.

#### *§112.235, Approved Test Methods*

The commission proposes new §112.235 to specify the test methods required to comply with the testing requirements in proposed new §112.234. Proposed new §112.235(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used for stack testing required for the P66 Borger Refinery unless an alternate test method is approved by the EPA. Proposed new §112.235(b) specifies that testing of exhaust gases at any site subject to Division 4 must be done using EPA Test Method 6 or 6C. Proposed new §112.235(c) specifies the test methods to be used for testing flare compliance at the P66 Borger Refinery. Proposed new §112.235(d) specifies the test methods to be used for analyzing fuels for sulfur content. Proposed new §112.235(e) allows the use of alternate methods after approval by the executive director and the EPA.

#### *§112.236, Recordkeeping Requirements*

The commission proposes new §112.236 to specify the records required to be maintained by the P66 Borger Refinery. All records are required to be maintained for at least five years. Proposed new §112.236(1) requires all monitoring data and sampling analyses, including CEMS data for exhaust flow rates and sulfur composition data, used to quantify emissions be maintained. For the two FCCUs during authorized MSS activities, the specific emissions limit based on the flow rate (from §112.232(b)(5) and (6)) for each block one-hour period is also required to be recorded. Proposed new §112.236(2) requires maintaining the methods and calculations used for determining compliance. Proposed new §112.236(3) requires maintaining documentation of any exceedance and the related reports

submitted to the TCEQ. Proposed new §112.236(4) requires maintaining copies of all emission test data and records.

#### §112.237, Reporting Requirements

The commission proposes new §112.237(a) to specify the reporting to TCEQ Region 1 required from each site if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum the date of and an explanation of each exceedance and noncompliance with any required stack parameter, whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for or a malfunction of the source or control device, the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s), and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred during planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO<sub>2</sub> is released, the provisions of §101.211 also apply, as do the reporting requirements for emission events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section. Proposed new §112.237(b) requires the owners or operators of the P66 Borger Refinery to submit within 60 days of testing the results of emissions testing for determining compliance with the emission standards of SO<sub>2</sub> to the TCEQ Office of Compliance and Enforcement, the appropriate TCEQ regional office, and any local air pollution control agency having jurisdiction.

The commission proposes new §112.237(c) as contingency measures if the EPA determines that the Hutchinson County SO<sub>2</sub> nonattainment area does not achieve attainment on or after the attainment date. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this division and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO<sub>2</sub> source, the wind speed and direction at the monitor with the NAAQS exceedance, and any exceptional events that may have occurred. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

#### §112.238, Compliance Schedule

The commission proposes new §112.238 to specify the date by which each source identified in §112.230 is required to comply with the requirements of Division 4.

#### Division 5, Requirements for the Tokai Borger Carbon Black Plant

##### §112.240, Applicability

The commission proposes new §112.240 to specify that the new rules apply to sources at the Tokai Borger Carbon Black Plant whose emissions the agency has determined contribute to po-

tential exceedances of the 2010 SO<sub>2</sub> NAAQS based on modeling conducted for the concurrently proposed SIP revisions discussed elsewhere in this preamble. The proposed rule provisions in new Division 5 are site-specific and specified by the current name and RN of the site. The proposed rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for sources to be authorized and constructed. The proposed requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activities) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment and emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO<sub>2</sub> nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points would have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 micrograms per cubic meter) to the modeled design value concentrations in the Hutchinson County SO<sub>2</sub> nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emissions point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

##### §112.241, Definitions

The commission proposes new §112.241 to define five terms used in Division 5. The commission proposes new §112.241(1) to define block one-hour average. Proposed new §112.241(2) defines the Hutchinson County SO<sub>2</sub> nonattainment area. Proposed new §112.241(3) defines pipeline quality natural gas, which is used throughout proposed new rules. Proposed new §112.241(4) defines production unit, which is used throughout the provisions for the two carbon black plants. Proposed new §112.241(5) defines tail gas, which is used throughout the provisions for the two carbon black plants.

##### §112.242, Control Requirements

Proposed new §112.242(a) prohibits an owner or operator of the Tokai Borger Carbon Black Plant from contravening the control requirements by changing the RN or EPN designation of any emissions point without prior approval by the agency and the EPA. This prohibition is needed because the proposed rules specify the requirements for existing individual facilities or control devices or groups of facilities and control devices based on their EPN designation in a specific version of the MAERT, so the designations must remain the same unless changes are approved by the commission and the EPA.

Proposed new §112.242(b) provides SO<sub>2</sub> emission limits during normal operations on a block one-hour average for the Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) of 109.10 lb/hr; the Plant 1 Dryer Stack (EPN 121) of 441.40 lb/hr; and the Plant



2 Dryer Stack (EPN 122) of 595.60 lb/hr. If the new flare is not authorized and constructed, proposed new §112.242(c) provides SO<sub>2</sub> emission limits on a block one-hour average when both Boilers 1 and 2 are not operating for the Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1) of 420.00 lb/hr; the Plant 1 Dryer Stack (EPN 121) of 250.00 lb/hr; the Plant 2 Dryer Stack (EPN 122) of 400.00 lb/hr; and specifies that there can be no SO<sub>2</sub> emissions from the Boiler Stacks, Boiler, and 2 Common Stack (EPN 119) during this period. If the new flare (EPN New-Flare) is authorized, constructed, and operated, proposed new §112.242(d) provides SO<sub>2</sub> emission limits on a block one-hour average when both Boilers 1 and 2 are not operating for the new flare (EPN New-Flare) of 806.60 lb/hr; the Plant 1 Dryer Stack (EPN 121) of 272.50 lb/hr; the Plant 2 Dryer Stack (EPN 122) of 436.00 lb/hr; and specifies that there can be no SO<sub>2</sub> emissions from the Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) during this period.

Proposed new §112.242(e) prohibits sources not included in proposed new §112.242(b) - (d) from combusting tail gas. If the new flare (EPN New-Flare) is not authorized and constructed, proposed new §112.242(f) prohibits the use of three current flares for the carbon black reactors (EPNs Flare-2, Flare-3, and Flare-4) after the compliance date in proposed new §112.248, which would only allow the use of current Flare 1 (EPN Flare-1). Proposed new §112.242(g) prohibits the use of all four flares for the carbon black reactors (EPNs Flare-1, Flare-2, Flare-3, and Flare-4) after the compliance date in proposed new §112.248 if the new flare (EPN New-Flare) is authorized, constructed, and operated. Proposed new §112.242(h) prohibits the use of the Plant 1 Number 1 and Number 2 Dryer Purge Stack (EPN 1) and Plant 1 Number 3 and Number 4 Dryer Purge stack (EPN 3) after the compliance date in proposed new §112.248. The company agreed to no longer have SO<sub>2</sub> emissions from the two purge stacks (EPN 1 and EPN 3). Proposed new §112.242(i) specifies that if the new flare (EPN New-Flare) is authorized and constructed, it must be used in place of the four existing flares (EPNs Flare-1, Flare-2, Flare-3, and Flare-4), may only receive tail gas when both Boilers 1 and 2 are not operating, and is required to have a stack height of at least 60.35 meters and be at a specific location. Proposed new §112.242(j) specifies that if the new flare (EPN New-Flare) is not authorized, constructed, and operated, the Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1) may only receive tail gas when both Boilers 1 and 2 are not operating.

Proposed new §112.242(k) allows the owner or operator to request an alternative SO<sub>2</sub> emission limit. The owner or operator must conduct and submit dispersion modeling and analysis that includes the requested new limit and all the inputs in the most recent attainment demonstration SIP. Any deviations from the modeling methodology used in the most recent attainment demonstration must be explained and approved by the executive director of the TCEQ and the EPA. The modeling and additional analyses must confirm the modeled regulatory design value in the nonattainment area will not increase due to the new limit. The request also needs to include any additional monitoring, testing, and recordkeeping requirements necessary to demonstrate compliance with the requested new limit. The owner or operator would only be allowed to comply with the alternative limit if the request is approved by both the TCEQ and the EPA. The commission solicits comments on whether an additional mechanism to request alternative SO<sub>2</sub> emission limits, similar to the alternate means of control (AMOC) provisions 30 TAC Chapter 115, Subchapter J, Division 1, would be appropriate to include in

Subchapter F. AMOC provisions in Chapter 112 could be used to establish an intraplant trading program that would allow for an increase in the emission limit at one emission point in exchange for an equal or greater decrease in emission limits at one or more EPNs at the same site. Comments regarding such a program should address the enforceability of any changes made under the program, monitoring, recordkeeping, reporting, and testing requirements, modeling to ensure NAAQS protectiveness, TCEQ and EPA review procedures, and public participation.

#### *§112.243, Monitoring Requirements*

Proposed new §112.243(a) requires the installation, maintenance, and calibration of a CEMS on Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) and specifies the applicable federal requirements for the combined stack of the two boilers. To determine emissions based on a mass balance for each production unit, proposed new §112.243(b)(1) and (2), respectively, require daily monitoring using the test methods in proposed new §112.245 of the sulfur content by weight of each grade of produced carbon black and daily monitoring using the test methods in proposed new §112.245 of the carbon black oil fed to each production unit. Proposed new §112.243(b)(3) requires hourly measurements of the amount of each grade of carbon black produced by each carbon black production unit.

Proposed new §112.243(c) requires installing, calibrating, maintaining, and operating totalizing fuel flow meters with an accuracy variation of no more than 5% to continuously monitor carbon black oil feed rate to each carbon black production unit. Proposed new §112.243(d) requires installing, calibrating, maintaining, and operating totalizing tail gas flow meters with an accuracy variation of no more than 5% to continuously monitor tail gas feed rate to each facility combusting this fuel. Proposed new §112.243(e) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

Proposed new §112.243(f) requires calculation, using the mass balance equation provided in §112.243(j), of total SO<sub>2</sub> emissions from each production unit. If the new flare (EPN New-Flare) is not authorized, constructed, and operated, proposed new §112.243(g) requires demonstrating compliance for the Plant 1 Dryer Stack (EPN 121), Plant 2 Dryer Stack (EPN 122), and Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1) by calculating the actual hourly emissions of SO<sub>2</sub> by using the mass balance approach in subsection (j) and the ratio of the volumetric flow of tail gas to the boilers (or flare) versus the total volumetric flow of tail gas and the ratio of the total volumetric flow to the dryers versus the total volumetric flow of tail gas. If the new flare (EPN New-Flare) is authorized, constructed, and operated, proposed new §112.243(h) requires demonstration of compliance on an hourly basis for the Plant 1 Dryer Stack (EPN 121), the Plant 2 Dryer Stack (EPN 122), and the Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1) using the mass balance equation provided in proposed new §112.243(j) and the ratios of volumetric flow of tail gas to the boilers (or flare) versus the total volumetric flow of tail gas and the ratio of the total volumetric flow to the dryers versus the total volumetric flow of tail gas. Proposed new §112.243(i) requires demonstration of compliance on an hourly basis (calculated as a block one-hour average) for the emissions points specified in §112.242(b)-(d).

Proposed new §112.243(j) provides the mass balance calculation method to be used in the prior paragraphs.

#### *§112.244, Testing Requirements*

The commission proposes new §112.244 to specify the testing required for fuels, raw materials, produced carbon black and monitoring equipment used measure sulfur content of exhaust gas or the sulfur content at the inlet of the flares. Proposed new §112.244(a) requires initial compliance demonstration testing by the compliance date for Boiler Stack, Boiler Stack 1 and 2 Combined Stack (EPN 119), Plant 1 Dryer Stack (EPN 121), and Plant 2 Dryer Stack (EPN 122). Proposed new §112.244(b) requires that the test methods in proposed new §112.245 be used for the initial demonstration of performance testing. Proposed new §112.244(c) requires that stack tests be conducted when operating the facility as close to the maximum rated capacity as practicable. Proposed new §112.244(d) requires that additional performance be conducted if requested by the executive director using the test methods in §112.245. Proposed new §112.244(d) specifies that when analysis of carbon black, carbon black oil, and fuels is required by this division, the test methods in proposed new §112.245(e) must be used.

#### *§112.245, Approved Test Methods*

The commission proposes new §112.245 to specify the test methods required to comply with the testing requirements in proposed new §112.244. Proposed new §112.245(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used for stack testing required for the Tokai Borger Carbon Black Plant unless an alternate test method is approved by the EPA. Proposed new §112.245(b) specifies that testing of exhaust gases must be done using EPA Test Method 6 or 6C. Proposed new §112.245(c) specifies the test methods to be used for testing flare compliance; although these federal requirements are specific to refineries, the rule makes them applicable to the Tokai Borger Carbon Black Plant as well. Proposed new §112.245(d) specifies the test methods to be used for analyzing fuels and carbon black oil for sulfur content in Division 5. Proposed new §112.245(e) specifies the test method for carbon black at both carbon black plants. Proposed new §112.245(f) allows the use of alternate methods after approval by the executive director and the EPA.

#### *§112.246, Recordkeeping Requirements*

The commission proposes new §112.246 to specify the records required to be maintained by the Tokai Borger Carbon Black Plant. All records are required to be maintained for at least five years. Proposed new §112.246(1) requires records (in units of lb/hr) of the amount of each grade of produced carbon black from each production unit. Proposed new §112.246(2) requires records of daily sampling of the sulfur content of carbon black oil feed to each production unit. Proposed new §112.246(3) requires records of daily sampling of the sulfur content of each grade of produced carbon black from each production unit. Proposed new §112.246(4) requires continuous records of the flow rate of carbon black oil to each production unit. Proposed new §112.246(5) requires continuous records of the flow rate of tail gas to each combustion device using this fuel. Proposed new §112.246(6) requires hourly records of which furnace was on-line in a block one-hour period and the mass balance calculations of emissions of SO<sub>2</sub>. Proposed new §112.246(7) requires records of continuous emissions data from SO<sub>2</sub> CEMS units. Proposed new §112.246(8) requires maintaining copies of required emissions test data and records

#### *§112.247, Reporting Requirements*

The commission proposes new §112.247(a) to specify the reporting to TCEQ Region 1 required by the owner or operator of the Tokai Borger Carbon Black Plant if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum the date of and an explanation of each exceedance and noncompliance with any required stack parameter, whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity or a malfunction of the source or control device, the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s), and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO<sub>2</sub> is released, the provisions of §101.211 also apply, as do the reporting requirements for emission events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Proposed new §112.247(b) requires the owner or operator of the Tokai Borger Carbon Black Plant to submit within 60 days of testing the results of emissions testing for determining compliance with the emission standards of SO<sub>2</sub> to the TCEQ Office of Compliance and Enforcement, the appropriate TCEQ regional office, and any local air pollution control agency having jurisdiction.

The commission proposes new §112.247(c) as contingency measures if the EPA determines that the Hutchinson County SO<sub>2</sub> nonattainment area does not achieve attainment on or after the attainment date. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this division and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO<sub>2</sub> source, the wind speed and direction at the monitor with the NAAQS exceedance, and any exceptional events that may have occurred. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

#### *§112.248, Compliance Schedule*

The commission proposes new §112.248 to specify the date by which each source identified in §112.240 is required to comply with the requirements of this division.

#### *Subchapter G, Requirements in the Navarro County Nonattainment Area*

##### *§112.300, Applicability*

The commission proposes new §112.300 to establish applicability for the only source in Navarro County to which the new requirements apply, which is the lightweight aggregate kiln and its control system at the Arcosa Streetman Plant. The NSR Permit 5337 MAERT dated May 29, 2020, designated the emissions

point as EPN E3-1; this designation must be maintained in the future regardless of any change to the lightweight aggregate kiln of its control system. Although the rule provisions are site-specific and specified by the current name (including RN) of the site and the affected source (including the EPN in a specified version of the NSR permit), the proposed rule specifies that the requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected source, unless removal of any requirement is approved by the EPA.

The TCEQ conducted attainment demonstration modeling for the source in the Navarro County SO<sub>2</sub> nonattainment area using emission rates lower than authorized in the NSR permit that were provided by the company and are needed to demonstrate attainment. There is only one emissions point in the Navarro County SO<sub>2</sub> nonattainment area that contributed to nonattainment of the 2010 SO<sub>2</sub> NAAQS, so this was the only emissions point modeled. The company committed to reducing the emission rate sufficiently for air dispersion modeling to demonstrate attainment. The lower emission rates were the rates used in the attainment demonstration modeling, which also used the potential stack parameters provided for the emissions point. Modeling was conducted and determined the emissions from the lightweight aggregate kiln and control system (EPN E3-1) contribute greater than the SIL of 3 ppb to the modeled design value concentrations for the Navarro County SO<sub>2</sub> nonattainment area. To provide flexibility for the company, two different emission rates with corresponding stack parameters supplied by the company were utilized in the modeling and both demonstrated attainment. Both of the emission rates are incorporated in the proposed rules as alternative emission limits, along with the restrictions on the associated stack parameters used in the modeling.

#### *§112.301, Definitions*

The commission proposes new §112.301 to define four terms used in Subchapter G. The commission proposes new §112.301(1) to define lightweight aggregate kiln, which is the only type of facility contributing to nonattainment in the Navarro County nonattainment area. For clarity, the commission proposes new §112.301(2) to define lightweight aggregate material based on a definition from the EPA. Proposed new §112.301(3) defines the Navarro County SO<sub>2</sub> nonattainment area. The commission proposes new §112.301(4) to define pipeline quality natural gas.

#### *§112.302, Control Requirements*

The commission proposes new §112.302 to specify the control requirements that are required for the lightweight aggregate kiln and any associated control device (EPN E3-1). The proposed rules include only the single emissions point from the kiln, which is currently from the water scrubber for controlling particulate emissions but may change if the company installs an additional control device for SO<sub>2</sub> or makes other changes. Regardless of any changes, the designation of the emissions point must remain EPN E3-1; if additional emissions points are added to the lightweight aggregate kiln or its control system for any reason (such as a bypass), the same requirements apply to them. The proposed control requirements were determined for potential emissions points based on modeling conducted by the agency. The amount of SO<sub>2</sub> in the exhaust gases from the lightweight aggregate kiln must be controlled with a control device, by limiting the sulfur content of both the fuel combusted and raw materials processed, or by a combination of these methods. The limits apply at all times the lightweight aggregate kiln is operated or otherwise produces exhaust gases containing SO<sub>2</sub>, such that the

emission limits in this section are not exceeded during normal operations or during authorized MSS activities.

Proposed new §112.302(a) prohibits the owner or operator from contravening the control requirements by changing the EPN designation of the lightweight aggregate kiln's emission point (EPN E3-1) without prior approval by the agency and the EPA. This prohibition is needed because the proposed rules specify the requirements for the kiln based on its EPN designation in a specific version of the NSR Permit issued on the specified date, so the designation must remain the same unless change is approved by the commission and the EPA.

Proposed new §112.302(b) provides the minimum stack height for the kiln, bypass (if present), or the current water scrubber or any new control device, as well as the required stack location. The company has not determined if control of the sulfur content of input materials (i.e., raw materials and fuels) or a control device will be used, nor has it determined the type of control device to be used if the sulfur content of the input materials is not controlled sufficiently to meet the emission rate limitations in this section.

Proposed new §112.302(c) provides the lower emission limit based on the attainment demonstration modeling that is sufficient to model attainment, which is 248.00 lb/hr SO<sub>2</sub> except as otherwise provided in subsection (d). The stack parameters associated with this limit are the minimum exhaust gas temperature of 125 degrees Fahrenheit and the minimum stack velocity of 65 feet per second (ft/s). Proposed new §112.302(d) provides the emission rate of 283.00 lb/hr SO<sub>2</sub> that models attainment at the higher stack velocity of 66 ft/s and temperature of 150 degrees Fahrenheit included in this subsection. The attainment demonstration modeling showed that the two emission rates in subsections (c) and (d) and their associated stack parameters, which are based on information provided by the company on what might be feasible, are sufficient to model attainment. Proposed new §112.302(e) limits the fuels used in the lightweight aggregate kiln to coal or petroleum coke (with sulfur content monitored as specified in proposed new §112.303), pipeline quality natural gas, or a combination of these fuels. Proposed new §112.302(f) specifies that the sulfur content of all fuel combusted in the kiln cannot exceed 200 lb/hr. Both of these provisions are in the NSR permit for the kiln and are included in the rule and cannot be changed without approval of a revised SIP by the EPA.

Proposed new §112.302(g) allows the owner or operator to request an alternative SO<sub>2</sub> emission limit. The owner or operator must conduct and submit dispersion modeling and analysis that includes the requested new limit and all the inputs in the most recent attainment demonstration SIP. Any deviations from the modeling methodology used in the most recent attainment demonstration must be explained and approved by the executive director of the TCEQ and the EPA. The modeling and additional analyses must confirm the modeled regulatory design value in the nonattainment area will not increase due to the new limit. The request must also include any additional monitoring, testing, and recordkeeping requirements necessary to demonstrate compliance with the requested new limit. The owner or operator would only be allowed to comply with the alternative limit if the request is approved by both the TCEQ and the EPA. The commission solicits comments on whether an additional mechanism to request alternative SO<sub>2</sub> emission limits, similar to the alternate means of control (AMOC) provisions 30 TAC Chapter 115, Subchapter J, Division 1, would be appropriate to include in Subchapter

F. AMOC provisions in Chapter 112 could be used to establish an intraplant trading program that would allow for an increase in the emission limit at one emission point in exchange for an equal or greater decrease in emission limits at one or more EPNs at the same site. Comments regarding such a program should address the enforceability of any changes made under the program, monitoring, recordkeeping, reporting, and testing requirements, modeling to ensure NAAQS protectiveness, TCEQ and EPA review procedures, and public participation.

#### *§112.303, Monitoring Requirements*

Proposed new §112.303 provides the monitoring requirements for the lightweight aggregate kiln and possible control, fuels, and raw materials at the Arcosa Streetman Plant. Proposed new §112.303(1) requires monitoring of the amount of raw materials processed each hour. Proposed new §112.303(2) requires monitoring of the amount of each fuel combusted each hour. Consistent with NSR Permit 5337, proposed new §112.303(3) requires monthly monitoring of the sulfur content of the natural gas used in the kiln. Proposed new §112.303(4) requires weekly monitoring of the average sulfur content of the coal and petroleum coke combusted. Proposed new §112.303(5) requires weekly monitoring of the average sulfur content of the raw materials processed in the kiln. Analyses by fuel providers or unaffiliated providers of raw materials or fuels are allowed in lieu of sulfur content monitoring by the company. Proposed new §112.303(6) requires continuous monitoring of the temperature and velocity of the exhaust gasses at the outlet of the stack because these parameters determine which emission limit applies. Proposed new §112.303(7) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

#### *§112.304, Testing Requirements*

The commission proposes new §112.304 to specify the testing required for fuels, raw materials, and the exhaust vent to comply with the monitoring requirements in proposed new §112.303. Because the changes to the control or operation of the lightweight aggregate kiln affects the emissions of SO<sub>2</sub>, proposed new §112.304(a) requires the owner or operator to stack test by the compliance date in proposed new §112.308, unless testing under §112.304(b) has been conducted. Proposed new §112.304(b) requires stack testing within 60 days of installing a control device or any operational change to the kiln; this testing is required after the effective date of the rule so that it is required for changes that occur before the compliance date. Retesting after the compliance date is required by proposed new §112.304(c) within 60 days after any changes to the kiln, input materials, or the control device. Because the company represented that the kiln is normally operated at full load, proposed new §112.304(d) requires that the stack tests in subsections (a) - (c) to be conducted with the kiln operating at full load and while burning fuels and processing raw materials with the maximum anticipated sulfur contents. The tests will show the removal efficiency if a control device has been installed or the maximum amount of SO<sub>2</sub> emissions during normal operations if no control device is installed. In the latter case, verification would be provided of the accuracy of using the material balance calculations of the amount of sulfur that was in input materials to predict the amount of sulfur dioxide emitted from the stack. The information from the tests, along with the monitored sulfur

content and usage rates of fuels and raw materials, allows the calculation of the actual SO<sub>2</sub> emission rates at any given time.

Proposed new §112.304(e) requires the use of a method specified in §112.305(c) for analyzing fuels' sulfur content. Proposed new §112.304(f) requires the use suitable methods for analyzing shale and other raw materials, as well as submitting the method to the executive director and receiving approval prior to use. Proposed new §112.304(g) requires conducting additional performance testing if requested by the executive director using test methods specified in §112.305.

#### *§112.305, Approved Test Methods*

The commission proposes new §112.305 to specify the test methods that are required to comply with the testing requirements in proposed new §112.304. The test methods relate to the testing requirements in proposed new §112.304 and are specified by type of testing. Proposed new §112.305(a) requires EPA Test Method 6 or 6C for testing SO<sub>2</sub> in exhaust gases during monitoring or stack testing. Proposed new §112.305(b) specifies the other test methods to be used in stack testing. Proposed new §112.305(c) specifies test methods to be used for determining the sulfur content of fuels. Proposed new §112.305(d) specifies that the test method for determining the sulfur content of raw materials processed in the lightweight aggregate kiln must be approved by the executive director. Proposed new §112.305(e) allows the use of alternate testing methods after prior approval by the executive director and the EPA.

#### *§112.306, Recordkeeping Requirements*

The commission proposes new §112.306 to specify the records required to be maintained for at least five years for the fuels, the raw materials, and the lightweight aggregate kiln and its control(s). The owner or operator of the Arcosa Streetman Plant is required in proposed new §112.306(1) to maintain records of hourly usage of each fuel. Proposed new §112.306(2) requires records of each monthly analysis of natural gas used in the lightweight aggregate kiln. Proposed new §112.306(3) requires records of each weekly analysis of coal and of petroleum coke. Proposed new §112.306(4) requires hourly records of the amounts of shale and other raw materials processed in the kiln. Proposed new §112.306(5) requires records of the continuous monitoring of exhaust gas temperature and velocity. Proposed new §112.306(6) requires records of the hourly calculations of the sulfur content of each fuel combusted and each raw material processed in the kiln and the summation of each of the individual sulfur contents. Proposed new §112.306(7) requires records of the mass balance calculations of hourly sulfur dioxide emissions, specified to be calculated by multiplying the summed sulfur contents by two to convert the weight of sulfur to that of sulfur dioxide.

Proposed new §112.306(8) requires records of any exceedance of an emission limit or any failure to meet the corresponding stack parameters. The owner or operator is required in proposed new §112.306(9) to maintain a copy of each stack test report and associated documentation for five years.

#### *§112.307, Reporting Requirements*

The commission proposes new §112.307(a) to specify the reporting required from the site if an affected emissions point exceeds the applicable SO<sub>2</sub> emission limit for the stack parameters at any given time or if required stack parameters are not met. The reports are due by March 31 of the year following the year

in which the exceedance occurs. The reports are required to include at a minimum the date of and an explanation of each exceedance and deviation from any required stack parameter, whether the exceedance or stack parameter noncompliance was related to an authorized MSS activity or a malfunction of the facility or its control device, the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s), and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO<sub>2</sub> is released, the provisions of §101.211 also apply, as do the reporting requirements for emission events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

The commission proposes new §112.307(b) to require the owner or operator to submit within 60 days of testing the results of emissions testing for determining compliance with the emission standards of SO<sub>2</sub> to the appropriate TCEQ regional office. The commission proposes new §112.307(c) as contingency measures if the EPA determines that the Navarro County SO<sub>2</sub> nonattainment area does not achieve attainment on or after the attainment date. If the EPA makes such a determination, the TCEQ will notify the owner or operator of the Streetman Plant (including successors if appropriate) of the determination and that these contingency measures are triggered. The owner or operator must conduct a full system audit of the lightweight aggregate kiln and its emissions controls and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from the lightweight aggregate kiln and its emissions controls, the wind speed and direction at the monitor with the NAAQS exceedance, and any exceptional events that may have occurred. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

#### *§112.308, Compliance Schedule*

The commission proposes new §112.308 to specify the date by which the source identified in §112.300 is required to comply with the requirements of Subchapter G.

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

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. No fiscal implications are anticipated for units of local government as a result of administration or enforcement of the proposed rule.

#### **Public Benefits and Costs**

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with federal law and continued protection of the environment and public health and safety combined with efficient and fair administration of SO<sub>2</sub> emission standards for Howard, Hutchinson, and Navarro Counties.

The proposed rules are likely to have a fiscal impact for owners or operators of affected industrial sites. The proposed rules would establish new regulatory requirements for combustion equipment, including boilers, dryers, incinerators, Fluidized Catalytic Cracking Unit (FCCU) regenerators, and flares at eight industrial sites in Howard, Hutchison, and Navarro Counties.

The agency estimates the owners or operators of seven of the sites would have expenses of approximately \$5,000 per year. In calculating these estimates, the agency made an assumption that each facility would be in compliance with the federal New Source Performance Standards (NSPS) Subpart Ja relating to the control, monitoring, testing, recordkeeping, and reporting requirements. This includes costs to install of new SO<sub>2</sub> air pollution control and dispersion enhancement equipment, retrofit monitoring instruments, monitor emissions, and surrogate parameters, conduct stack testing and sampling, and comply with additional new rule requirements.

The agency estimates that the owners or operators of one site in Navarro County may experience a fiscal impact if they choose to install new add-on controls to satisfy the proposed rule requirements. These potential costs assume that the owners or operators would purchase a new SO<sub>2</sub> scrubber, initiate emissions testing, and increase compliance monitoring in order to comply with the proposed rules. Capital costs for a wet scrubber used for SO<sub>2</sub> control are estimated to be approximately \$55,000,000 with annual operating costs of \$2,000,000. The proposed compliance testing and monitoring are estimated at \$12,400 per year. The first year of implementation could total \$57 million with an annual cost in the next four years of approximately \$2 million. The proposed rules require compliance by January 1, 2025, so there is the potential for minimal costs in the next two years.

#### **Local Employment Impact Statement**

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

#### **Rural Community Impact Statement**

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

#### **Small Business and Micro-Business Assessment**

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

#### **Small Business Regulatory Flexibility Analysis**

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

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

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed

rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions nor eliminate current employee position. The proposed rulemaking will not significantly affect the amount of fees paid to the agency; however, there is a possibility that fees paid to the agency may be slightly reduced. The proposed rulemaking expands existing regulations for the control of SO<sub>2</sub> emissions and affects owners or operators of eight industrial sites in three designated SO<sub>2</sub> nonattainment areas. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rulemaking's purpose is to create state and federally enforceable emission limits and accompanying compliance obligations (monitoring, recordkeeping, reporting, and testing).

The proposed rulemaking would create new rule sections. The revisions to Chapter 112 would be used as control strategies for demonstrating attainment of the 2010 SO<sub>2</sub> NAAQS in the areas designated nonattainment, as discussed elsewhere in this preamble.

The proposed rulemaking implements requirements of the FCAA, 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410, generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though

the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the required attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Berry v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893

(Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 4 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); *Texas Citrus Exchange v. Sharp*, 955 S.W.2d 164 (Tex. App. Austin 1997); *Texas Dept. of Protective and Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170 (Tex. 2004); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

As explained previously in this preamble, the specific intent of the proposed rulemaking is to create state and federally enforceable emission limits and accompanying compliance obligations (monitoring, recordkeeping, reporting, and testing) that would be used as control strategies for demonstrating attainment of the 2010 SO<sub>2</sub> NAAQS in the areas designated nonattainment. Thus, the proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because it does not meet the definition of a "major environmental rule," and also does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the proposed rulemaking is to create state and federally enforceable emission limits and accompanying compliance obligations (monitoring, recordkeeping, reporting, and testing) that would be used as control strategies for demonstrating attainment of the 2010 SO<sub>2</sub> NAAQS in the areas designated nonattainment.

Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

The proposed rulemaking implements requirements of the FCAA, 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as

schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA. While the SIP rules will have an impact on the emissions points subject to the emission limits and compliance obligations required by the proposed rules, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rules fulfill the FCAA requirement for states to create plans including control strategies to attain and maintain the NAAQS, as discussed elsewhere in this preamble. The proposed rules would assist in achieving the timely attainment of the 2010 SO<sub>2</sub> NAAQS and reduced public exposure to SO<sub>2</sub> emissions. The NAAQS are promulgated by the EPA in accord with the FCAA, which requires the EPA to identify and list air pollutants that "cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diversion mobile or stationary sources", as required by 42 USC §7408. For those air pollutants listed, the EPA then is required to issue air quality criteria identifying the latest scientific knowledge regarding on adverse health and welfare effects associated with the listed air pollutant, in accord with 42 USC §7408. For each air pollutant for which air quality criteria have been issued, the EPA must publish proposed primary and secondary air quality standards based on the criteria that specify a level of air quality requisite to protect the public health and welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air, as required by 42 USC §7409. As discussed elsewhere in this preamble, states have the primary responsibility to adopt plans designed to attain and maintain the NAAQS.

Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only

affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

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

**Effect on Sites Subject to the Federal Operating Permits Program**

Chapter 112 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the compliance date of the rules, revise their operating permit to include the new Chapter 112 requirements.

**Announcement of Hearing**

The commission will offer a public hearing in each of the areas impacted by this proposed rulemaking. The first public hearing will be offered on May 18, 2022, at 6:00 p.m. at the Dora Roberts Community Center Ballroom, located at 100 Whipkey Drive in Big Spring. A second public hearing will be offered on May 19, 2022, at 6:00 p.m. in the City Council Room of the Borger City Hall, located at 600 N. Main Street in Borger, and a third public hearing will be offered on May 23, 2022, at 6:00 p.m. at the Cook Education Center at Navarro College, located at 3100 W. Collin Street in Corsicana. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

**Submittal of Comments**

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-035-112-AI. The comment period closes on June 2, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adapt.html](https://www.tceq.texas.gov/rules/propose_adapt.html). For further information, please contact Joseph Thomas, Air Quality Division, at (512) 239-3934.

## **SUBCHAPTER E. REQUIREMENTS IN THE HOWARD COUNTY NONATTAINMENT AREA DIVISION 1. REQUIREMENTS FOR DELEK THE BIG SPRING REFINERY**

### **30 TAC §§112.100 - 112.108**

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The proposed new sections implement TWC, §5.103 and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

#### §112.100. Applicability.

(a) The requirements in this division apply to affected sources at the Big Spring Refinery (Regulated Entity Number (RN) 100250869) in the Howard County sulfur dioxide (SO<sub>2</sub>) nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes. Once approved by the United States Environmental Protection Agency (EPA), the requirements in this division continue to apply until the EPA approves their removal.

(b) Affected sources are designated by the emission point number (EPN) and source name used in the site's New Source Review (NSR) permit as issued on the specified date. The specific affected sources are as follows:

(1) EPN 06ESPPCV, FCCU ESP Stack, in NSR Permit 49154 dated March 12, 2012;

(2) EPN 69TGINC, No. 1 SRU Incinerator Vent, in NSR Permit 80833 dated October 28, 2020;

(3) EPN 71TGINC, No. 2 SRU Incinerator Vent, in NSR Permit 80833 dated October 28, 2020;

(4) EPN 14NEASTFLR, North East Flare, in NSR Permit 80833 dated October 28, 2020;

(5) EPN 02CRUDEFLR, Crude Flare, in NSR Permit 80833 dated October 28, 2020;

(6) EPN 05REFMFLR, Reformer Flare, in NSR Permit 80833 dated October 28, 2020; and



(7) EPN 16SOUTHFLR, South Flare, in NSR Permit 80833 dated October 28, 2020.

§112.101. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour of the day (e.g., from 12:00:00 to 12:59:59).

(2) Howard County sulfur dioxide (SO<sub>2</sub>) nonattainment area--The portion of Howard County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO<sub>2</sub> National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021 (86 *Federal Register* 16055), effective April 30, 2021.

(3) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

§112.102. Control Requirements.

(a) The owner or operator may not change the Regulated Entity Number (RN) or the emission point number (EPN) designation of any source subject to §112.100 of this title (relating to Applicability) or otherwise contravene any of the control requirements in this section without the prior approval of the executive director and the United States Environmental Protection Agency (EPA).

(b) EPN 06ESPPCV (FCCU ESP Stack) emissions may not exceed 250.00 pounds per hour (lb/hr) sulfur dioxide (SO<sub>2</sub>) on a seven-day rolling average.

(c) EPN 14NEASTFLR, EPN 02CRUDEFLR, EPN 05REFMFLR, and EPN 16SOUTHFLR may only combust pipeline quality natural gas or combust a refinery gas stream with a maximum sulfur content of 162 parts per million by volume (ppmv) as hydrogen sulfide determined hourly on a three-hour rolling average.

(d) EPN 14NEASTFLR (North East Flare) emissions may not exceed 25.00 lb/hr SO<sub>2</sub> during normal operations, and the following limits apply during authorized maintenance, startup, and shutdown (MSS) activities:

(1) emissions may be equal to or greater than 25.01 lb/hr SO<sub>2</sub> but less than 250.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than four calendar days each year;

(2) emissions may be equal to or greater than 250.01 lb/hr SO<sub>2</sub> but less than 500.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than six calendar days each year;

(3) emissions may be greater than or equal to 500.01 lb/hr SO<sub>2</sub> but less than 1,500.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than two calendar days each year;

(4) emissions above 1,500.00 lb/hr SO<sub>2</sub> are prohibited; and

(5) if SO<sub>2</sub> emissions that correspond to more than one range specified in paragraphs (1) - (3) of this subsection occur during a calendar day, only the emissions in the highest range will be used in determining which emissions rate range specified in paragraphs (1) - (3) of this subsection applies to that calendar day.

(e) EPN 02CRUDEFLR (Crude Flare) emissions may not exceed 51.80 lb/hr SO<sub>2</sub> during normal operations, and the following limits apply during authorized MSS activities:

(1) emissions may be equal to or greater than 51.81 lb/hr SO<sub>2</sub> but less than 250.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than 14 calendar days each year;

(2) emissions may be equal to or greater than 250.01 lb/hr SO<sub>2</sub> but less than 750.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than three calendar days each year;

(3) emissions above 750.00 lb/hr SO<sub>2</sub> are prohibited; and

(4) if SO<sub>2</sub> emissions that correspond to the ranges in both paragraphs (1) and (2) of this subsection occur during a calendar day, only the range in paragraph (2) of this subsection applies to that calendar day;

(f) EPN 05REFMFLR (Reformer Flare) emissions may not exceed 103.70 lb/hr SO<sub>2</sub> during normal operations, and the following limits apply during authorized MSS activities:

(1) emissions may be equal to or greater than 103.71 lb/hr SO<sub>2</sub> but less than 250.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than four calendar days each year;

(2) emissions may be equal to or greater than 250.01 lb/hr SO<sub>2</sub> but less than 750.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than five calendar days each year;

(3) emissions above 750.00 lb/hr SO<sub>2</sub> are prohibited; and

(4) if SO<sub>2</sub> emissions that correspond to the ranges in both paragraphs (1) and (2) of this subsection occur during a calendar day, only the range in paragraph (2) of this subsection applies to that calendar day.

(g) EPN 16SOUTHFLR (South Flare) emissions may not exceed 118.70 lb/hr SO<sub>2</sub> during normal operations, and the following limits apply during authorized MSS activities:

(1) emissions may be equal to or greater than 118.71 lb/hr SO<sub>2</sub> but less than 250.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than four calendar days each year;

(2) emissions may be equal to or greater than 250.01 lb/hr SO<sub>2</sub> but less than 500.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than 12 calendar days each year;

(3) emissions may be equal to or greater than 500.01 lb/hr SO<sub>2</sub> but less than 1,696.01 lb/hr SO<sub>2</sub> in any hour within a calendar day for no more than two calendar days each year;

(4) emissions above 1,696.00 lb/hr SO<sub>2</sub> are prohibited; and

(5) if SO<sub>2</sub> emissions that correspond to more than one range specified in paragraphs (1) - (3) of this subsection occur during a calendar day, only the emissions in the highest range will be used in determining which emissions rate range specified in paragraphs (1) - (3) of this subsection applies to that calendar day;

(h) EPN 69TGINC (No. 1 SRU Incinerator Vent) emissions may not exceed 17.03 lb/hr SO<sub>2</sub>.

(i) EPN 71TGINC (No. 2 SRU Incinerator Vent) emissions may not exceed 12.78 lb/hr SO<sub>2</sub>.

(j) The owner or operator may request an alternative SO<sub>2</sub> emission limit if dispersion modeling and analysis consistent with the most recent attainment demonstration confirms the alternative limit will not increase the modeled regulatory design value in the nonattainment area. The alternative limit and any deviations from the modeling methodol-

ogy from the most recent attainment demonstration must be approved by the executive director and the EPA.

§112.103. Monitoring Requirements.

The owner or operator shall continuously monitor equipment subject to sulfur dioxide (SO<sub>2</sub>) emission limits or standards in §112.102 of this title (relating to Control Requirements) as follows:

(1) operate, calibrate, and maintain a continuous emissions monitoring system (CEMS) to record EPN 06ESPPCV (FCCU ESP Stack) emissions at least every 15 minutes and calculate block one-hour average emission rates in accordance with 40 Code of Federal Regulations (CFR) §60.105a(g);

(2) for EPN 14NEASTFLR, EPN 02CRUDEFLR, EPN 05REFMFLR, and EPN 16SOUTHFLR, continuously monitor the flow rate and the total sulfur concentration for each inlet gas stream in compliance with the 40 CFR §60.107a(e);

(3) install, operate, calibrate, and maintain a CEMS to measure and record EPN 69TGINC and EPN 71TGINC SO<sub>2</sub> emissions at least every 15 minutes and calculate a block one-hour average in accordance with 40 CFR §60.106a(a); and

(4) continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize the most accurate data substitution methodology available that is at least equivalent to engineering judgement and replace all missing or invalidated monitoring data for the entire period the monitored emission point has emissions.

§112.104. Testing Requirements.

By the compliance date in §112.108 of this title (relating to Compliance Schedule), the owner or operator shall comply with the following:

(1) perform continuous emissions monitoring system relative accuracy tests for equipment installed to meet the requirements of §112.103 of this title (relating to Monitoring Requirements) in accordance with 40 Code of Federal Regulations (CFR) §60.105a(g)(2) for EPN 06RSPPCV and 40 CFR §60.106a(1)(iii) for EPN 69TGINC, and EPN 71TGINC;

(2) perform initial testing for the flare monitoring devices required by §112.103 of this title in accordance with the manufacturer's specifications to ensure that the required monitors are calibrated and function properly;

(3) conduct additional performance testing, if requested by the executive director, in compliance with 40 CFR §60.104a to demonstrate compliance with applicable emission limits or standards. The notification requirements of 40 CFR §60.8(d) apply to each initial performance test and to each subsequent performance test required by the executive director, except for performance tests conducted for the purpose of obtaining supplemental data because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments. All performance tests must be conducted using test methods allowed in §112.105 of this title (relating to Approved Test Methods).

§112.105. Approved Test Methods.

(a) Tests required under §112.104 of this title (relating to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in 40 CFR §60.8(b).

(b) Sulfur content of fuels must be determined (American Society for Testing and Materials (ASTM) Method D1945-91 ASTM Method D3588-93 for fuel composition.

(c) Sulfur dioxide (SO<sub>2</sub>) in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(d) Alternate methods as approved by the executive director and the EPA may be used.

§112.106. Recordkeeping Requirements.

The owner or operator shall maintain records sufficient to demonstrate compliance with this division for a minimum of five years, including but not limited to the following:

(1) all monitoring data and sampling analyses, including but not limited to continuous emission monitoring system data and sulfur composition data, used to quantify emissions;

(2) the methodology and any associated calculations used to determine compliance;

(3) documentation of any period that emission limits or standards were exceeded and copies of required exceedance reports submitted to the appropriate Texas Commission on Environmental Quality Regional Office; and

(4) copies of required emission test data and records.

§112.107. Reporting Requirements.

(a) If a source subject to an emissions limit in §112.102 of this title (relating to Control Requirements) exceeds an applicable emission limit or fails to meet a required stack parameter the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including but not limited to the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter, including the specific rule citation from §112.102 of this title;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with either an authorized MSS activity for or a malfunction of an affected facility or control system;

(4) a description of the corrective action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each test report for any testing conducted under §112.104 of this title (relating to Testing Requirements) to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Howard County sulfur dioxide (SO<sub>2</sub>) nonattainment area has failed to attain the 2010 one-hour SO<sub>2</sub> National Ambient Air Quality Standard pursuant to Federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO<sub>2</sub> sources subject to §112.100 of this title (related to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO<sub>2</sub> emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain, including a review and consideration of, at a minimum, hourly mass emissions of SO<sub>2</sub> from each SO<sub>2</sub> source subject to this division; the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO<sub>2</sub> readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any exceptional event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.108. Compliance Schedules.

The owner or operator of an affected source subject to §112.100 of this title (relating to Applicability) shall comply with the requirements of this division as soon as practicable, but no later than January 1, 2025.

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 April 14, 2022.

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For further information, please call: (512) 239-0600



## DIVISION 2. REQUIREMENTS FOR THE TOKAI BIG SPRING CARBON BLACK PLANT 30 TAC §§112.110 - 112.118

### Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which

authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The proposed new sections implement TWC, §5.103 and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

### §112.110. Applicability.

(a) The requirements in this division apply to affected sources at the Tokai Big Spring Carbon Black Plant (Regulated Entity Number (RN) 100226026) in the Howard County sulfur dioxide (SO<sub>2</sub>) nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes. Once approved by the United States Environmental Protection Agency (EPA), the requirements in these rules continue to apply until the EPA approves their removal.

(b) Affected existing sources are designated by the emission point number (EPN) and source name used in the site's New Source Review (NSR) permit as issued on the specified date. Applicable control devices to be authorized and constructed are similarly designated by the EPN that the company used to designate the future unit in the attainment demonstration modeling, with an appropriate name also used in the rules. The specific affected sources are as follows:

(1) EPN 13A, Incinerator + HRSG, in NSR Permit 6580 dated November 23, 2021;

(2) EPN 7A, Dryer Stack Units Nos. 1 & 2, in NSR Permit 6580 dated November 23, 2021;

(3) EPN 12A, Dryer Stack Units No. 3, in NSR Permit 6580 dated November 23, 2021;

(4) EPN Flare-1, Flare 1, in NSR Permit 6580 dated November 23, 2021;

(5) EPN Flare-2, Flare 2, in NSR Permit 6580 dated November 23, 2021;

(6) EPN Flare-3, Flare 3, in NSR Permit 6580 dated November 23, 2021; and

(7) EPN FLARE 4, Flare 4, if authorized and constructed to replace the existing three flares for the carbon black reactors (EPN Flare-1, EPN Flare-2, and EPN Flare-3).

### §112.111. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour of the day (e.g., from 12:00:00 to 12:59:59).

(2) Howard County sulfur dioxide (SO<sub>2</sub>) nonattainment area--The portion of Howard County designated by the United States

Environmental Protection Agency as nonattainment for the 2010 SO<sub>2</sub> National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021 (86 *Federal Register* 16055), effective April 30, 2021.

(3) Off-line--With respect to a carbon black oil furnace, a period when either:

(A) only natural gas and combustion air are supplied to the furnace burners (no oil is supplied to the furnace burners), and the furnace is not manufacturing carbon black or generating tail gas; or

(B) the oil furnace is not operating.

(4) On-line--Not "off-line," as defined in paragraph (3) of this subsection.

(5) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

(6) Production unit--The combined equipment used in the manufacture of carbon black, including but not limited to, carbon black oil furnaces or reactors, bag unit filters, cyclones, fans, and carbon black dryers as specified in this rule. Production Units 1 and 2 consist of nine carbon black oil furnaces that produce tail gas and five carbon black dryers that combust tail gas and exhaust emissions through Emission Point Number (EPN) 7A. Production Unit 3 consists of four carbon black oil furnaces that produce tail gas and two carbon black dryers that combust tail gas and exhaust emissions through EPN 12A.

(7) Tail gas--The exit gaseous stream of a carbon black oil furnace consisting of water vapor, carbon monoxide, hydrogen, pyrolysis by-products, and reduced and organic sulfur compounds as a result of the manufacture of carbon black.

#### §112.112. Control Requirements.

(a) The owner or operator may not change the Regulated Entity Number (RN) or the emission point number (EPN) designation of any source subject to §112.110 of this title (relating to Applicability) or otherwise contravene any of the control requirements in this section without the prior approval of the executive director and the United States Environmental Protection Agency (EPA).

(b) Affected sources in §112.110 of this title may not exceed the following pounds per hour (lb/hr) sulfur dioxide (SO<sub>2</sub>) limits: Figure: 30 TAC §112.112(b)

(c) if during any block one-hour period the number of furnaces on-line changes, the fewest number of furnaces on-line at any time during that block one-hour period must be used to calculate the emission limit.

(d) The maximum emission rate of SO<sub>2</sub> allowed under subsections (b) - (f) of this section for each EPN specified under subsections (b) - (e) of this section for each operational scenario occurring during any block one-hour period must be determined on a block one-hour average.

(e) Tail gas may only be combusted in EPN 13A, EPN FLARE 4, EPN 7A, or EPN 12A.

(f) Simultaneous operation of EPN 13A and EPN FLARE 4 during any block one-hour period is prohibited.

(g) EPN Flare-1, EPN Flare-2, and EPN Flare-3 may not be operated on or after the compliance date in §112.118 of this title (relating to Compliance Schedule).

(h) After construction and commencement of operation, if authorized, EPN FLARE 4 must have a stack height of no less than

60.35 meters and must be located at Universal Transverse Mercator (UTM) coordinates UTM East Meters 273185 and UTM North Meters 3573987 in UTM Zone 14;

(i) EPN 13A (Incinerator + HRSG) must have a stack height of no less than 65.00 meters upon the compliance date in §112.118 of this title.

(j) The owner or operator may request an alternative SO<sub>2</sub> emission limit if dispersion modeling and analysis consistent with the most recent attainment demonstration confirms the alternative limit will not increase the modeled regulatory design value in the nonattainment area. The alternative limit and any deviations from the modeling methodology from the most recent attainment demonstration must be approved by the executive director and the EPA.

#### §112.113. Monitoring Requirements.

(a) For each block one-hour period of operation calculate total SO<sub>2</sub> emissions from each production unit using the following equation. Figure: 30 TAC §112.113(a)

(b) Calculate SO<sub>2</sub> emissions from EPN 13A (Incinerator + HRSG), EPN 7A (Dryer Stack Units Numbers 1 and 2), EPN 13A (Dryer Stack Units Number 3), and EPN FLARE 4 (Flare 4) for each block one-hour period of operation during which emissions of SO<sub>2</sub> are emitted from the emission points listed in this subsection, using the following equation.

Figure: 30 TAC §112.113(b)

(c) Install, calibrate, maintain, and operate one or more totalizing fuel flow meters, with an accuracy of ± 5%, to continuously measure the feed rate of carbon black oil feedstock supplied to each carbon black production unit.

(d) Install, calibrate, maintain, and operate totalizing tail gas flow meters, with an accuracy of ± 5%, to continuously measure the volumetric flow rate of tail gas to each tail gas combustion device covered under §112.112 of this title (relating to Control Requirements).

(e) Use a continuous data acquisition system that continuously measures, calculates, and records the following quantities:

(1) the volumetric flow rate of tail gas to EPN 13A (Incinerator + HRSG) and EPN Flare 4 (Flare 4);

(2) the volumetric flow rate of tail gas to each carbon black dryer comprising Production Units 1 and 2, which exhaust through EPN 7A, and Production Unit 3, which exhausts through EPN 12A;

(3) the total volumetric flow rate of tail gas to all of the carbon black dryers;

(4) the volumetric flow rate of tail gas to all tail gas combustion devices;

(5) the ratio of quantities in paragraphs (1) and (4) of this subsection, identified as " $\pi_{inc}$ ", which is the split coefficient for the Incinerator + HRSG and for Flare 4 used in the calculations in subsection (b) of this section; and

(6) the ratio of quantities in paragraphs (3) and (4) of this subsection, identified as " $\pi_{dry}$ ", which is the split coefficient for the dryers used in the calculations in subsection (b) of this section.

(f) Install, calibrate, maintain, and operate the continuous data acquisition system specified in subsection (d) of this section in accordance with the manufacturer's recommended procedures.

(g) Measure daily the sulfur content by weight of the carbon black oil in the feed to each production units according to the requirements of §112.115(b) of this title (relating to Approved Test Methods).

(h) For each grade of carbon black produced, measure daily the sulfur content by weight of the carbon black produced by each carbon black production unit according to the requirements of §112.115(c) of this title.

(i) Determine the amount of each grade of carbon black produced by each carbon black production unit for each hour.

(j) Continuous monitoring data collected in accordance with requirements in this section must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

#### §112.114. Testing Requirements.

(a) Perform an initial demonstration of compliance test on the emission points specified in §112.112 of this title (relating to Control Requirements) for sulfur dioxide (SO<sub>2</sub>), except for flares, while the associated facilities are firing tail gas, by the compliance date in §112.118 of this of this title (relating to Compliance Schedules).

(b) Use the methods provided in §112.115 of this title (relating to Approved Test Methods) for the initial demonstration of compliance test required under subsection (a) of this section.

(c) During stack testing the owner or operation shall operate the facility at the maximum rated capacity, or as near thereto as practicable.

(d) Conduct additional performance testing, if requested by the executive director. All performance tests must be conducted using test methods allowed in §112.115 of this title.

#### §112.115. Approved Test Methods.

(a) Tests required under §112.114 of this title (relating to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in 40 CFR §60.8(b).

(b) Sulfur content of fuels and carbon black oil must be determined using American Society for Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition.

(c) Sulfur content of carbon black must be determined using ASTM Method D1619.

(d) Sulfur dioxide (SO<sub>2</sub>) in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(e) Alternate methods as approved by the executive director and the EPA may be used.

#### §112.116. Recordkeeping Requirements.

The owner or operator shall maintain records sufficient to demonstrate compliance with each applicable requirement for a minimum of five years, including but not limited to the following:

(1) records, in units of pounds per hour, of production of carbon black for each grade of carbon black from each carbon black production unit;

(2) daily records of sulfur content by weight of the carbon black oil feedstock;

(3) daily records of sulfur content by weight of the carbon black produced for each grade of carbon black produced by each carbon black production unit;

(4) records of continuous carbon black oil feedstock flow rates for each carbon black production unit;

(5) records of continuous tail gas volumetric flow rates to each tail gas combustion device covered by §112.112 of this title (relating to Control Requirements); and

(6) for each block one-hour period of operation of a carbon black production unit:

(A) records of the identification of each furnace on-line during the block one-hour period;

(B) records of the applicable emission limit of sulfur dioxide (SO<sub>2</sub>) as determined by §112.112 of this title during the block one-hour period;

(C) records of all factors used in the calculations in §112.113 of this title (relating to Monitoring Requirements) of the actual emissions and the required mass balance calculations of emissions of SO<sub>2</sub> for each emission point number with SO<sub>2</sub> emissions during the block one-hour period;

(7) documentation of any period that emission limits or standards were exceeded, and copies of exceedance reports submitted to the Texas Commission on Environmental Quality; and

(8) copies of required emission test data and records.

#### §112.117. Reporting Requirements.

(a) If a source that is subject to an emissions limit in §112.112 of this title (relating to Control Requirements) exceeds the applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including but not limited to the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter, including the specific rule citation from §112.112 of this title;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with either an authorized maintenance, startup, or shutdown activity or a malfunction of an affected facility or control system;

(4) a description of the corrective action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each test report for any testing conducted under §112.114 of this title (relating to Testing Requirements) to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the United States Environmental Protection Agency (EPA) that the Howard County sulfur dioxide (SO<sub>2</sub>) nonattainment area has failed to attain the 2010 one-hour SO<sub>2</sub> National Ambient Air Quality Standard pursuant to Federal Clean Air Act § 179(c), 42 United States Code §7509(c),

the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO<sub>2</sub> sources subject to §112.110 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO<sub>2</sub> emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain, including a review and consideration of, at a minimum, hourly mass emissions of SO<sub>2</sub> from each SO<sub>2</sub> source subject to this division; the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO<sub>2</sub> readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any exceptional event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.118. Compliance Schedules.

The owner or operator of an affected source subject to §112.110 of this title (relating to Applicability) shall comply with the requirements of this division as soon as practicable, but no later than January 1, 2025.

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. REQUIREMENTS IN THE HUTCHINSON COUNTY NONATTAINMENT AREA

### DIVISION 1. REQUIREMENTS FOR THE CHEVRON PHILLIPS CHEMICAL BORGER PLANT

#### 30 TAC §§112.200 - 112.203, 112.206 - 112.208

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The proposed new sections implement TWC, §5.103 and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017 and 382.021.

§112.200. Applicability.

(a) The requirements in this division apply to affected sources at the Chevron Phillips Chemical Borger Plant (Regulated Entity Number (RN) 102320850) in the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes. Once approved by the United States Environmental Protection Agency (EPA), the requirements in these rules continue to apply until the EPA approves their removal.

(b) Affected sources are designated by the source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. The affected sources are as follows:

(1) EPN F-M2A, Sulfolene Handling Area, in NSR Permit 21918 dated February 5, 2019;

(2) EPN FL-1, North Flare, in NSR Permit 21918 dated February 5, 2019; and

(3) EPN FL-2, South Flare, in NSR Permit 21918 dated February 5, 2019.

§112.201. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area--The portion of Hutchinson County designated by the United

States Environmental Protection Agency as nonattainment for the 2010 SO<sub>2</sub> National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021 (86 *Federal Register* 16055), effective April 30, 2021.

(3) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

§112.202. Control Requirements.

(a) The owner or operator may not change the Regulated Entity Number (RN) or emission point number (EPN) designation of any source subject to §112.200 of this title (relating to Applicability) or otherwise contravene any of the control requirements in this section without the prior approval of the executive director and the United States Environmental Protection Agency (EPA).

(b) EPN F-M2A (Sulfolene Handling Area) emissions may not exceed the following:

(1) the emissions from the sulfolene building and trailer(s) at that location (EPN F-M2A 1 in the attainment demonstration modeling) may not exceed 1.00 pound per hour (lb/hr) sulfur dioxide (SO<sub>2</sub>); and

(2) the emissions from the parking/storage area for trailer(s) with sulfolene (EPN F-M2A 2 in the attainment demonstration modeling) may not exceed 0.98 lb/hr SO<sub>2</sub>.

(c) The combined emissions from EPN FL-1 (North Flare) and EPN FL-2 (South Flare) may not exceed 430.00 lb/hr SO<sub>2</sub>.

(d) The owner or operator may request an alternative SO<sub>2</sub> emission limit if dispersion modeling and analysis consistent with the most recent attainment demonstration confirms the alternative limit will not increase the modeled regulatory design value in the nonattainment area. The alternative limit and any deviations from the modeling methodology from the most recent attainment demonstration must be approved by the executive director and the EPA.

§112.203. Monitoring Requirements.

(a) For EPN F-M2A (Sulfolene Handling Area), monitor the temperature on an hourly basis inside each trailer containing sulfolene.

(b) Monitor the sulfur content of gases routed to EPN FL-1 (North Flare) and to EPN FL-2 (South Flare) by using separate analyzers, which are capable of accurately measuring and recording hydrogen sulfide, sulfur dioxide (SO<sub>2</sub>), and organic sulfur compounds levels to the range of 1 part per million by volume (ppmv) on a continuous basis.

(c) Monitor the volumetric flow rate of gases routed to the EPN FL-1 (North Flare) and to the EPN FL-2 (South Flare) using separate totalizing gas flow meters with an accuracy of ±5% that are installed, calibrated, maintained, and operated per the manufacturer's directions.

(d) Continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

§112.206. Recordkeeping Requirements.

The owner or operator shall maintain records of the following continuous monitoring parameters for a minimum of five years:

(1) for EPN F-M2A (sulfolene handling areas), hourly records of both the temperature inside each storage trailer holding sulfolene and the amount of sulfolene stored in each trailer, whether the trailer is located near the sulfolene handling building (EPN F-M2A 1 in the attainment demonstration modeling) or in the trailer parking area (EPN F-M2A 2 in the attainment demonstration modeling); and

(2) the sulfur content and flow rate of gases routed to the EPN FL-1 (North Flare) and to the EPN FL-1 (South Flare), as well as the specific time periods that each flare was in use.

§112.207. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.202 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with a maintenance, startup, and shutdown period for or malfunction of an affected facility or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit the exceedance report in subsection (a) of this section to the TCEQ Regional Office for the area where the plant is located annually with documentation of the results of the hourly monitoring of temperature in the trailers containing sulfolene. Any period when the monitored temperature within any trailer exceeded 125 degrees Fahrenheit must be noted in the report as having been above the maximum temperature used in testing to determine the emission rate for the sulfolene handling area used in attainment demonstration modeling.

(c) After the effective date of a determination by the United States Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area has failed to attain the 2010 one-hour SO<sub>2</sub> National Ambient Air Quality Standard pursuant to Federal Clean Air Act § 179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO<sub>2</sub> sources subject to §112.200 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO<sub>2</sub> emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain, including a review and consideration of, at a minimum, hourly mass emissions of SO<sub>2</sub> from each SO<sub>2</sub> source subject to this division; the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency

distribution of wind direction temporally correlated with SO<sub>2</sub> readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any exceptional event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.208. Compliance Schedules.

The owner or operator of a source subject to §112.200 of this title (relating to Applicability) shall comply with the requirements of this division as soon as practicable, but no later than January 1, 2025.

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## DIVISION 2. REQUIREMENTS FOR THE IACX ROCK CREEK GAS PLANT

### 30 TAC §§112.210 - 112.213, 112.216 - 112.218

#### Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling

methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The proposed new sections implement TWC, §5.103 and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§112.210. Applicability.

(a) The requirements in this division apply to affected sources at the IACX Rock Creek Gas Plant (Regulated Entity Number (RN) 100216613) in the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes. Once approved by the United States Environmental Protection Agency (EPA), the requirements in these rules continue to apply until the EPA approves their removal.

(b) Affected sources are designated by the source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. The specific affected sources are as follows:

(1) EPN FLR1, Acid Gas Flare, in NSR Permit 3131A dated July 12, 2011; and

(2) EPN INCIN1, Acid Gas Incinerator, in NSR Permit 3131A dated July 12, 2011.

§112.211. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO<sub>2</sub> National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021 (86 Federal Register 16055), effective April 30, 2021.

(3) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

§112.212. Control Requirements.

(a) An owner or operator may not change the Regulated Entity Number (RN) or emission point number (EPN) designation of any source subject to §112.210 of this title (relating to Applicability) or otherwise contravene any of the control requirements in this section without the prior approval of the executive director and the United States Environmental Protection Agency (EPA).

(b) EPN FLR1 (Acid Gas Flare) and EPN INCIN1 (Acid Gas Incinerator) may not operate simultaneously.

(c) EPN FLR1 (Acid Gas Flare) emissions may not exceed 140.00 lb/hr SO<sub>2</sub>.

(d) EPN INCIN1 (Acid Gas Incinerator) emissions may not exceed 140.00 lb/hr SO<sub>2</sub>.

(e) The owner or operator may request an alternative SO<sub>2</sub> emission limit if dispersion modeling and analysis consistent with the most



recent attainment demonstration confirms the alternative limit will not increase the modeled regulatory design value in the nonattainment area. The alternative limit and any deviations from the modeling methodology from the most recent attainment demonstration must be approved by the executive director and the EPA.

§112.213. Monitoring Requirements.

The owner or operator shall continuously monitor the gases routed to EPN FLR1 (Acid Gas Flare) or EPN INCIN1 (Acid Gas Incinerator) by using the following:

(1) an analyzer that is capable of accurately measuring and recording hydrogen sulfide levels to the range of 1 ppmv and that is installed prior to the manifold that directs gases to EPN FLR1 or EPN INCIN1;

(2) a totalizing gas flow meter with an accuracy of ±5% that is installed, calibrated, maintained, and operated per the manufacturer's directions to continuously measure and record the volume of gas directed to EPN FLR1 or EPN INCIN1; and

(3) continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgment, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

§112.216. Recordkeeping Requirements.

The owner or operator shall maintain records for a minimum of five years of the continuous monitoring of the sulfur content and flow rate of gases routed to either the flare or the incinerator as well as which control device was in use.

§112.217. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.212 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with a maintenance, startup, and shutdown period for or malfunction of an affected facility or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area has failed to attain the 2010 one-hour SO<sub>2</sub> National Ambient Air Quality Standard pursuant to Federal Clean

Air Act § 179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO<sub>2</sub> sources subject to §112.210 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO<sub>2</sub> emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain, including a review and consideration of, at a minimum, hourly mass emissions of SO<sub>2</sub> from each SO<sub>2</sub> source subject to this division; the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO<sub>2</sub> readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any exceptional event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.218. Compliance Schedules.

The owner or operator of a source subject to §112.210 of this title (relating to Applicability) shall comply with the requirements of this division as soon as practicable, but no later than January 1, 2025.

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

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**DIVISION 3. REQUIREMENTS FOR THE  
ORION BORGER CARBON BLACK PLANT**

**30 TAC §§112.220 - 112.228**

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality

of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The proposed new sections implement TWC, §5.103 and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017 and 382.021.

§112.220. Applicability.

(a) The requirements in this division apply to affected sources at the Orion Borger Carbon Black Plant (Regulated Entity Number (RN) 100209659) in the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes. Once approved by the United States Environmental Protection Agency (EPA), the requirements in these rules continue to apply until the EPA approves their removal.

(b) Affected existing sources are designated by source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date, except one waste heat boiler is designated by its source name and EPN in the applicable Pollution Control Project Standard Permit. Applicable control devices to be authorized and constructed are similarly designated by the EPN that the company used to designate the future unit in the attainment demonstration modeling, with an appropriate name also used in the rules. The specific affected sources are as follows:

(1) EPN E-6BN, Waste Heat Boiler - CDS Stack, in the Final Action letter for Pollution Control Project Standard Permit 164021 dated March 3, 2021;

(2) EPN E-10FL, Unit 1 Reactor/Flare, in NSR Permit 8780 dated March 24, 2015;

(3) EPN E-20FL, Unit 2 Reactor/Flare, in NSR Permit 8780 dated March 24, 2015;

(4) EPN E-40FL, Unit 4 Reactor/Flare, in NSR Permit 8780 dated March 24, 2015; and

(5) EPN CFL, Combined Flare, if authorized and constructed.

§112.221. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and

continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO<sub>2</sub> National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021 (86 *Federal Register* 16055), effective April 30, 2021.

(3) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

(4) Production unit--the carbon black oil furnace or group of carbon black oil furnaces, dryers or groups of dryers, and any ancillary units used in the manufacture of carbon black and producing tail gas.

(5) Tail gas--The exit gaseous stream of a carbon black oil furnace consisting of water vapor, carbon monoxide, hydrogen, pyrolysis by-products, and reduced and organic sulfur compounds as a result of the manufacture of carbon black.

§112.222. Control Requirements.

(a) The owner or operator may not change the Regulated Entity Number (RN) or emission point number (EPN) designation of any source subject to §112.220 of this title (relating to Applicability) or otherwise contravene any of the control requirements in this section without the prior approval of the executive director and the United States Environmental Protection Agency (EPA).

(b) Hourly mass emissions of sulfur dioxide (SO<sub>2</sub>), on a block one-hour average, may not exceed the following:

(1) 144.11 lb/hr SO<sub>2</sub>, for EPN E-6BN (Waste Heat Boiler - CDS Stack); and

(2) 750.05 lb/hr SO<sub>2</sub>, for EPN CFL (Combined Flare);

(c) Tail gas may only be combusted in a source whose emissions are routed to EPN E-6BN (Waste Heat Boiler - CDS Stack) or EPN CFL (Combined Flare).

(d) EPN E-10FL (Unit 1 Reactor/Flare), EPN E-20FL (Unit 2 Reactor/Flare), and EPN E-40FL (Unit 4 Reactor/Flare) may not operate on or after the compliance date in §112.228 of this title (relating to Compliance Schedules).

(e) If EPN CFL (Combined Flare) is not authorized and constructed by the compliance date in §112.228 of this title, no flaring is allowed until EPN CFL is authorized, constructed, and operating.

(f) After construction and commencement of operation, EPN CFL (Combined Flare) must meet the following parameters:

(1) receive all waste gases instead of the existing EPN E-10FL, EPN E-20FL, and EPN E-40FL;

(2) only receive tail gas when EPN E-6BN (Waste Heat Boiler - CDS Stack) is not operating; and

(3) be constructed with a stack height of no less than 65.00 meters and must be located at Universal Transverse Mercator (UTM) coordinates UTM East Meters 279745.85 and UTM North Meters 3949549.50 in UTM Zone 14.

(g) The owner or operator may request an alternative SO<sub>2</sub> emission limit if dispersion modeling and analysis consistent with the most recent attainment demonstration confirms the alternative limit will not increase the modeled regulatory design value in the nonattainment area. The alternative limit and any deviations from the

modeling methodology from the most recent attainment demonstration must be approved by the executive director and the EPA.

§112.223. Monitoring Requirements.

(a) Install, calibrate, and maintain a continuous emissions monitoring system (CEMS) to monitor exhaust SO<sub>2</sub> from EPN E-6BN (Waste Heat Boiler - CDS Stack) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Part 60 as follows:

- (1) §60.13;
- (2) Appendix B, Performance Specification 2, for SO<sub>2</sub>; and
- (3) Appendix F, quality assurance procedures.

(b) For days when EPN CFL (Combined Flare) is used to combust tail gas, monitor the sulfur content of the carbon black oil feedstock and produced carbon black, as well as the production rate of the carbon black, as follows:

(1) measure daily the sulfur content by weight of the carbon black oil in the feed to each production unit according to the requirements of §112.225 of this title (relating to Approved Test Methods);

(2) for each grade of carbon black produced, measure daily the sulfur content by weight of the carbon black produced by each carbon black production unit according to the requirements of §112.225 of this title; and

(3) determine hourly the amount of each grade of carbon black produced by each carbon black production unit.

(c) install, calibrate, maintain, and operate one or more totalizing fuel flow meters, with an accuracy of ± 5%, to continuously measure the feed rate of carbon black oil feedstock supplied to each carbon black production unit.

(d) Install, calibrate, maintain, and operate totalizing tail gas flow meters, with an accuracy of ± 5%, to continuously measure the volumetric flow rate of tail gas to EPN CFL (Combined Flare).

(e) Continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

(f) Calculate total SO<sub>2</sub> emissions from EPN CFL (Combined Flare) using the equation in subsection (h) of this section, which assumes that all the sulfur in the carbon black oil feedstock that is not accounted for by sulfur in the carbon black product, is converted to SO<sub>2</sub> to demonstrate compliance with the emission requirements of §112.222 of this title (relating to Control Requirements).

(g) Actual emissions of SO<sub>2</sub> from each EPN specified under §112.222 of this title for each operational scenario occurring during any block one-hour period must be calculated on a block one-hour average.

(h) Calculate total SO<sub>2</sub> emissions from each production unit using the following equation.  
Figure: 30 TAC §112.223(h)

§112.224. Testing Requirements.

(a) During stack testing, the owner or operator shall operate the facility at the maximum rated capacity, or as near thereto as practicable; and

(b) The owner or operator shall conduct additional performance testing requested by the executive director using test methods allowed in §112.225 of this title (relating to Approved Test Methods).

(c) When analysis of produced carbon black, carbon black oil, and fuels, including but not limited to tail gas, is required for monitoring under §112.223 of this title (relating to Monitoring Requirements), the owner or operator shall use a test method in §112.225 of this title for the analysis.

§112.225. Approved Test Methods.

(a) Tests required under §112.224 of this title (relating to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in §60.8(b) (36 Federal Register (FR) 24877, published Dec. 23, 1971, as amended through 81 FR 59809, published Aug. 30, 2016).

(b) Sulfur dioxide (SO<sub>2</sub>) in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(c) For flares subject to emissions limitations or standards in §112.222 of this title (relating to Control Requirements), the owner or operator shall use flare test methods and procedures in 40 CFR §60.104a (73 FR 35867, published June 24, 2008 as amended 77 FR 56470, published September 12, 2012 and 80 FR 75231, published December 1, 2015) as if the federal rules apply to carbon black plants.

(d) Sulfur content of fuels and carbon black oil must be determined using American Society for Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition.

(e) Sulfur content of carbon black must be determined using ASTM Test Method D1619.

(f) Alternate test methods as approved by the executive director and the EPA may be used.

§112.226. Recordkeeping Requirements.

The owner or operator shall maintain records sufficient to demonstrate compliance with each applicable requirement for a minimum of five years, including but not limited to the following:

(1) records in units of pounds per hour (lb/hr) of production of carbon black for each grade of carbon black from each carbon black production unit;

(2) daily records of sulfur content by weight of the carbon black oil feedstock;

(3) daily records of sulfur content by weight of the carbon black produced for each grade of carbon black produced by each carbon black production unit;

(4) records of continuous carbon black oil feedstock flow rates for each carbon black production unit;

(5) records of continuous tail gas volumetric flow rates to each tail gas combustion device covered by §112.222 of this title (relating to Control Requirements);

(6) for each block one-hour period of operation of a carbon black production unit, the required mass balance calculations of emissions of SO<sub>2</sub> from each emission point number (EPN) for those sources in operation without a continuous emissions monitoring system for sulfur dioxide (SO<sub>2</sub>);

(7) the continuous emissions monitoring data of emissions of SO<sub>2</sub> for each EPN for those sources in operation with a CEMS for SO<sub>2</sub>; and

(8) copies of required emission test data and records.

§112.227. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.222 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with a maintenance, startup, and shutdown period for or malfunction of an affected facility or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each stack test report to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area has failed to attain the 2010 one-hour SO<sub>2</sub> National Ambient Air Quality Standard pursuant to Federal Clean Air Act § 179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO<sub>2</sub> sources subject to §112.220 of this title (related to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO<sub>2</sub> emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator of each company shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain, including a review and consideration of, at a minimum, hourly mass emissions of SO<sub>2</sub> from each SO<sub>2</sub> source subject to this division; the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO<sub>2</sub> readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any exceptional event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.228. Compliance Schedules.

The owner or operator of a source subject to §112.220 of this title (relating to Applicability) shall comply with the requirements of this division as soon as practicable, but no later than January 1, 2025.

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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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0600



**DIVISION 4. REQUIREMENTS FOR THE  
PHILLIPS 66 REFINERY**

**30 TAC §§112.230 - 112.238**

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The proposed new sections implement TWC, §5.103 and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017 and 382.021.

§112.230. Applicability.

(a) The requirements in this division apply to affected sources at the Phillips 66 Refinery (Regulated Entity Number (RN) 102495884) in the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes. Once approved by the United States Environmental Protection Agency (EPA),

the requirements in these rules continue to apply until the EPA approves their removal.

(b) Affected existing sources are designated by the emission point number (EPN) and source name (when possible) used in the site's New Source Review (NSR) permit as issued on the specified date. The specific affected sources are as follows:

(1) EPN 29P1, Unit 29 FCCU Stack, in NSR Permit 9868A dated September 17, 2021;

(2) EPN 40P1, Unit 40 FCCU Stack, in NSR Permit 9868A dated September 17, 2021;

(3) EPN 34I1, SRU Incinerator, in NSR Permit 9868A dated September 17, 2021;

(4) EPN 43I1, SCOT Unit Incinerator, in NSR Permit 9868A dated September 17, 2021 (emissions from this source during authorized maintenance, startup, and shutdown activities are included as EPN SRU MS CAP in the attainment demonstration modeling);

(5) EPN 66FL1, EPN 66FL2, EPN 66FL3, and EPN 66FL12 in NSR Permit 80799 dated October 1, 2020 (emissions from these sources are included as EPN FLARE R CAP and EPN FLARE MS CAP in the attainment demonstration modeling);

(6) EPN 12E1, EPN 12E2, EPN 12E3, EPN 12E4, EPN 12E5, EPN 12E6, EPN 12E7, EPN 7E1, EPN 7E2, EPN 7E3, EPN 7E4, EPN 7E5, EPN 7E6, EPN 10H1, EPN 19B1/19H1, EPN 19B1/19H2, EPN 19H3, EPN 19B2/19H4, EPN 19H5, EPN 19H6, EPN 2H1, EPN 2H2, EPN 22H1, EPN 26H1, EPN 28H1, EPN 29H4, EPN 34I1, EPN 36H1, EPN 40H1, EPN 4H2, EPN 42H1, EPN 42H2, EPN 43I1, EPN 50H1, EPN 5H1, EPN 6H1, EPN 7H1-4, EPN 9H1, EPN 93E1, EPN 93E2, EPN 98H1, EPN 51H1, EPN 4H1, EPN 6H3, EPN 12H1, EPN 66FL13 and EPN 41H1 in NSR Permit 9868A dated September 17, 2021 (these sources included as EPN FLEX R CAP in the attainment demonstration modeling); and

(7) EPN 12E1, EPN 12E2, EPN 12E3, EPN 12E4, EPN 12E5, EPN 12E6, EPN 12E7, EPN 7E1, EPN 7E2, EPN 7E3, EPN 7E4, EPN 7E5, EPN 7E6, EPN 10H1, EPN 19B1/19H1, EPN 19B1/19H2, EPN 19H3, EPN 19B2/19H4, EPN 19H5, EPN 19H6, EPN 2H1, EPN 2H2, EPN 22H1, EPN 26H1, EPN 28H1, EPN 29H4, EPN 36H1, EPN 40H1, EPN 4H2, EPN 42H1, EPN 42H2, EPN 50H1, EPN 5H1, EPN 6H1, EPN 7H1-4, EPN 9H1, EPN 93E1, EPN 93E2, EPN 98H1, EPN 51H1, EPN 4H1, EPN 6H3, EPN 12H1, EPN 66FL13 and EPN 41H1, in NSR Permit 9868A dated September 17, 2021 (these sources are included as EPN FLEX MS CAP in the attainment demonstration modeling).

#### §112.231. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO<sub>2</sub> National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021 (86 Federal Register 16055), effective April 30, 2021.

(3) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

#### §112.232. Control Requirements.

(a) The owner or operator may not change the Regulated Entity Number (RN) or emission point number (EPN) designation of any source subject to §112.230 of title (relating to Applicability) or otherwise contravene any of the control requirements in this section without the prior approval of the executive director and the United States Environmental Protection Agency (EPA).

(b) EPN 34I1 (SRU Incinerator) emissions may not exceed 44.82 pounds per hour (lb/hr) sulfur dioxide (SO<sub>2</sub>) during normal operations.

(c) EPN 43I1 (SCOT Unit Incinerator) emissions may not exceed 37.00 lb/hr SO<sub>2</sub> during normal operations.

(d) During authorized maintenance, startup, and shutdown (MSS) activities, EPN 34I1 (SRU Incinerator) and EPN 43I1 (SCOT Unit Incinerator) may not operate simultaneously and the combined emissions from these sources may not exceed 94.00 lb/hr SO<sub>2</sub>.

(e) EPN 66FL1, EPN 66FL2, EPN 66FL3, EPN 66FL12, and EPN 66FL13 may only combust pipeline quality natural gas or a refinery gas stream with a maximum sulfur content of 162 parts per million by volume as hydrogen sulfide determined hourly on a three-hour rolling average basis.

(f) The combined emissions from EPN 66FL1, EPN 66FL2, EPN 66FL3, and EPN 66FL12 may not exceed 100.14 lb/hr SO<sub>2</sub> during normal operations and 850.00 lb/hr SO<sub>2</sub> during authorized MSS activities.

(g) The combined emissions from EPNs listed in §112.230(b)(6) of this title may not exceed 185.69 lb/hr SO<sub>2</sub> during normal operations.

(h) The combined emissions from EPNs listed in §112.230(b)(7) of this title may not exceed 106.05 lb/hr SO<sub>2</sub> during authorized MSS activities.

(i) EPN 29P1 (Unit 29 FCCU Stack) emissions may not exceed the following:

(1) 155.49 lb/hr SO<sub>2</sub> during normal operations;

(2) 155.49 lb/hr SO<sub>2</sub> during authorized MSS activities with an exhaust flow rate greater than or equal to 210,922.60 actual cubic meters/hour (am<sup>3</sup>/hr);

(3) 140.00 lb/hr SO<sub>2</sub> during authorized MSS activities with an exhaust flow rate greater than or equal to 158,191.95 am<sup>3</sup>/hr and less than 210,922.60 am<sup>3</sup>/hr;

(4) 130.00 lb/hr SO<sub>2</sub> during authorized MSS activities with an exhaust flow rate greater than or equal to 105,461.30 am<sup>3</sup>/hr and less than 158,191.95 am<sup>3</sup>/hr; and

(5) exhaust flow rates below 105,461.30 am<sup>3</sup>/hr are prohibited.

(j) EPN 40P1 (Unit 40 FCCU Stack) emissions may not exceed the following:

(1) 155.49 lb/hr SO<sub>2</sub> during normal operations;

(2) 155.49 lb/hr SO<sub>2</sub> during authorized MSS activities with an exhaust flow rate greater than or equal to 298,242.71 am<sup>3</sup>/hr;

(3) 140.00 lb/hr SO<sub>2</sub> during authorized MSS activities with an exhaust flow rate greater than or equal to 223,682.03 am<sup>3</sup>/hr and less than 298,242.71 am<sup>3</sup>/hr;

(4) 130.00 lb/hr SO<sub>2</sub> during authorized MSS activities with an exhaust flow rate greater than or equal to 149,121.36 am<sup>3</sup>/hr and less than 223,682.03 am<sup>3</sup>/hr; and

(5) exhaust flow rates below 149,121.36 am<sup>3</sup>/hr are prohibited.

(k) Compliance with the emission limits in this section must be calculated on a block one-hour average basis.

(l) The owner or operator may request an alternative SO<sub>2</sub> emission limit if dispersion modeling and analysis consistent with the most recent attainment demonstration confirms the alternative limit will not increase the modeled regulatory design value in the nonattainment area. The alternative limit and any deviations from the modeling methodology from the most recent attainment demonstration must be approved by the executive director and the EPA.

#### §112.233. Monitoring Requirements.

(a) Install, operate, calibrate, and maintain a continuous emissions monitoring system (CEMS) to measure and record the sulfur dioxide (SO<sub>2</sub>) emissions and the exhaust gas flow rates from EPN 29P1 and EPN 40P1 in accordance with the 40 Code of Federal Regulations (CFR) §60.105a(g).

(b) Install, operate, calibrate, and maintain a CEMS to record hourly SO<sub>2</sub> emissions from EPN 34I1 and EPN 43I1 in accordance with 40 CFR §60.106a(a).

(c) Continuously monitor the flow rate and the total sulfur concentration EPN 66FL1, EPN 66FL2, EPN 66FL3, EPN 66FL12, and EPN 66FL13 inlet gas stream in accordance with the 40 CFR §60.107a(e) and (f)(1).

(d) Continuously monitor the flow rate and the total sulfur concentration for each affected EPN listed in §112.230(b)(6) and (7) of this title (relating to Applicability) in accordance with 40 CFR §60.107a(a), (e) and (f)(1).

(e) Continuous monitoring data collected in accordance with requirements in this section must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

#### §112.234. Testing Requirements.

(a) Perform continuous emissions monitoring system (CEMS) relative accuracy tests in accordance with 40 Code of Federal Regulations (CFR) §60.105a(g)(2) for EPN 29P1 and EPN 40P1 and 40 CFR §60.106a(1)(iii) for EPN 34I1 and EPN 43I1.

(b) Perform initial testing for monitoring devices required by §112.233 of this title (relating to Monitoring Requirements) in accordance with the manufacturer's specifications to ensure that the required monitors are calibrated and function properly by the compliance date in §112.238 of this title (relating to Compliance Schedules).

(c) Conduct additional performance testing, if requested by the executive director, in compliance with 40 CFR §60.104a to demonstrate compliance with applicable emission limits or standards. The notification requirements of 40 CFR §60.8(d) apply to each initial performance test and to each subsequent performance test required by the

executive director, except for performance tests conducted for the purpose of obtaining supplemental data because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments. All performance tests must be conducted using test methods allowed in §112.235 of this title (relating to Approved Test Methods).

(d) When analysis of fuels, including but not limited to refinery gas, is required under §112.233 of this title, the owner or operator shall use a test method in §112.235 of this title for the analysis.

#### §112.235. Approved Test Methods.

(a) Tests required under §112.234 of this title (related to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in §60.8(b) (36 *Federal Register* (FR) 24877, published Dec. 23, 1971, as amended through 81 FR 59809, published Aug. 30, 2016).

(b) Sulfur dioxide (SO<sub>2</sub>) in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(c) For flares subject to emissions limitations or standards in §112.232 of this title (relating to Control Requirements), the owner or operator shall use flare test methods and procedures in 40 CFR §60.104a (73 FR 35867, published June 24, 2008 as amended 77 FR 56470, published September 12, 2012 and 80 FR 75231, published December 1, 2015).

(d) Sulfur content of fuels must be determined using American Society for Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition.

(e) Alternate test methods as approved by the executive director and the EPA may be used.

#### §112.236. Recordkeeping Requirements.

The owner or operator shall maintain records sufficient to demonstrate compliance with each applicable requirement for a minimum of five years, including but not limited to:

(1) all monitoring data and sampling analyses, including but not limited to continuous emissions monitoring system flow rate and sulfur composition data, used to quantify emissions, and for EPN 29P1 and EPN 40P1, authorized MSS activities records including one-hour average exhaust flow rates in am<sup>3</sup>/hr and emission rates;

(2) the methodology and any associated calculations employed to determine compliance;

(3) documentation of any period that emission limits or standards were exceeded, and exceedance reports submitted to the Texas Commission on Environmental Quality; and

(4) copies of emission test data and records.

#### §112.237. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.232 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with a maintenance, startup, and shutdown period for or malfunction of an affected facility or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each stack test report to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area has failed to attain the 2010 one-hour SO<sub>2</sub> National Ambient Air Quality Standard pursuant to Federal Clean Air Act § 179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO<sub>2</sub> sources subject to §112.230 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO<sub>2</sub> emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain, including a review and consideration of, at a minimum, hourly mass emissions of SO<sub>2</sub> from each SO<sub>2</sub> source subject to this division; the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO<sub>2</sub> readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any exceptional event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.238. Compliance Schedules.

The owner or operator of a source subject to §112.230 of this title (relating to Applicability) shall comply with the requirements of this division as soon as practicable, but no later than January 1, 2025.

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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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0600



## DIVISION 5. REQUIREMENTS FOR THE TOKAI BORGER CARBON BLACK PLANT

### 30 TAC §§112.240 - 112.248

#### Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The proposed new sections implement TWC, §5.103 and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017 and 382.021.

#### §112.240. Applicability.

(a) The requirements in this division apply to affected sources at the Tokai Borger Carbon Black Plant site (Regulated Entity Number (RN) 100222413) in the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes. Once approved by the United States Environmental Protection Agency (EPA), the requirements in these rules continue to apply until the EPA approves their removal.

(b) Affected existing sources are designated by the emission point number (EPN) and source name used in the site's New Source Review (NSR) permit as issued on the specified date. Applicable control devices to be authorized and constructed are similarly designated by the EPN that the company used to designate the future unit in the attainment demonstration modeling, with an appropriate name also used in the rules. The specific affected sources are as follows:

(1) EPN 119, Boiler Stacks, Boiler 1 and 2 Common Stack, in NSR Permit 1867A dated July 21, 2020;

(2) EPN 121, Plant 1 Dryer Stack, designated in NSR Permit 1867A dated July 21, 2020;

(3) EPN 122, Plant 2 Dryer Stack, in NSR Permit 1867A dated July 21, 2020;

(4) EPN 1, Plant 1 Number 1 and Number 2 Dryer Purge Stack, in NSR Permit 1867A dated July 21, 2020;

(5) EPN 3, Plant 1 Number 3 and Number 4 Dryer Purge Stack, in NSR Permit 1867A dated July 21, 2020;

(6) EPN Flare-1, EPN Flare-2, EPN Flare-3 and EPN Flare-4, the four flares for the carbon black reactors, designated in NSR Permit 1867A dated July 21, 2020; and

(7) EPN New-Flare, New Flare, if authorized and constructed to replace all existing flares (EPN Flare-1, EPN Flare-2, EPN Flare-3, and EPN Flare-4) for the carbon black reactors.

§112.241. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO<sub>2</sub> National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021 (86 *Federal Register* 16055), effective April 30, 2021.

(3) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

(4) Production unit--The carbon black oil furnace or group of carbon black oil furnaces, dryers or groups of dryers, and any ancillary units used in the manufacture of carbon black and producing tail gas.

(5) Tail gas--The exit gaseous stream of a carbon black oil furnace consisting of water vapor, carbon monoxide, hydrogen, pyrolysis by-products, and reduced and organic sulfur compounds as a result of the manufacture of carbon black.

§112.242. Control Requirements.

(a) An owner or operator may not change the Regulated Entity Number (RN) or emission point number (EPN) designation of any source subject to §112.240 of this title (relating to Applicability) or otherwise contravene any of the control requirements in this section without the prior approval of the executive director and the United States Environmental Protection Agency (EPA).

(b) Hourly mass emissions of sulfur dioxide (SO<sub>2</sub>), on a block one-hour average, may not exceed the following when Boilers 1 or 2, singly or together, are operating:

(1) 109.10 lb/hr SO<sub>2</sub> for EPN 119 (Boiler Stacks, Boiler 1 and 2 Common Stack);

(2) 441.40 lb/hr SO<sub>2</sub> for EPN 121 (Plant 1 Dryer Stack);  
and

(3) 595.60 lb/hr SO<sub>2</sub> for EPN 122 Plant 2 (Dryer Stack).

(c) If EPN New Flare is not authorized, constructed, and operated, hourly mass emissions of SO<sub>2</sub>, on a block one-hour average, may not exceed the following when both Boilers 1 and 2 are not operating:

(1) 420.00 lb/hr SO<sub>2</sub> for EPN Flare-1 (Plant 1, Unit 1 Primary Bag Filter Flare);

(2) 0.00 lb/hr SO<sub>2</sub> for EPN 119 (Boiler Stacks, Boiler 1 and 2 Common Stack);

(3) 250.00 lb/hr SO<sub>2</sub> for EPN 121 (Plant 1 Dryer Stack);  
and

(4) 400.00 lb/hr SO<sub>2</sub> for EPN 122 (Plant 2 Dryer Stack).

(d) If EPN New Flare (New-Flare) is authorized, constructed, and operated, hourly mass emissions of SO<sub>2</sub>, on a block one-hour average, may not exceed the following when both Boilers 1 and 2 are not operating:

(1) 806.60 lb/hr SO<sub>2</sub> for EPN New Flare (New-Flare);

(2) 0.00 lb/hr SO<sub>2</sub> for the EPN 119 (Boiler Stacks, Boiler 1 and 2 Common Stack);

(3) 272.50 lb/hr SO<sub>2</sub> for EPN 121 (Plant 1 Dryer Stack);  
and

(4) 436.00 lb/hr SO<sub>2</sub> for EPN 122 (Plant 2 Dryer Stack).

(e) Tail gas may only be combusted in a facility whose emissions are routed to EPN 119 (Boiler 1 and 2 Common Stack), EPN 121 (Plant 1 Dryer Stack), EPN 122 (Plant 2 Dryer Stack), EPN Flare-1 (Plant 1, Unit 1 Primary Bag Filter Flare), or EPN New Flare (New-Flare).

(f) If EPN New Flare (New-Flare) is not authorized, constructed, and operated, EPN Flare-2, EPN Flare-3, and EPN Flare-4 may not operate on or after the compliance date in §112.248 of this title (relating to Compliance Schedules).

(g) If EPN New Flare (New-Flare) is authorized, constructed, and operated, EPN Flare-1, EPN Flare-2, EPN Flare-3, and EPN Flare-4 may not operate on or after the compliance date in §112.248 of this title.

(h) EPN 1 (Plant 1 Number 1 and Number 2 Dryer Purge Stack) and EPN 3 (Plant 1 Number 3 and Number 4 Dryer Purge Stack) may not operate on or after the compliance date in §112.248 of this title.

(i) If EPN New Flare (New-Flare) is authorized, constructed, and operated, it must meet the following parameters:

(1) EPN New Flare (New-Flare) must receive all waste gases instead of EPN Flare-1, EPN Flare-2, EPN Flare-3, and EPN Flare-4;

(2) tail gas may be routed to EPN New Flare (New-Flare) only when Boilers 1 and 2 are not operating; and

(3) EPN New Flare (New-Flare) must be constructed with a stack height of no less than 60.35 meters and must be located at Universal Transverse Mercator (UTM) coordinates UTM East Meters 279488 and UTM North Meters 3949627 in UTM Zone 14.

(j) If EPN New Flare (New-Flare) is not authorized, constructed, and operated, tail gas may be routed to EPN Flare-1 (Plant 1, Unit 1 Primary Bag Filter Flare) only when Boilers 1 and 2 are not operating.

(k) The owner or operator may request an alternative SO<sub>2</sub> emission limit if dispersion modeling and analysis consistent with the most recent attainment demonstration confirms the alternative



limit will not increase the modeled regulatory design value in the nonattainment area. The alternative limit and any deviations from the modeling methodology from the most recent attainment demonstration must be approved by the executive director and the EPA.

§112.243. Monitoring Requirements.

(a) Install, calibrate, and maintain a CEMS to monitor exhaust SO<sub>2</sub> from EPN 119 (Boiler Stacks, Boiler 1 and 2 Common Stack) in accordance with the requirements of 40 CFR Part 60 as follows:

- (1) §60.13;
- (2) Appendix B, Performance Specification 2, for SO<sub>2</sub>; and
- (3) Appendix F, quality assurance procedures.

(b) Monitor the sulfur content of the carbon black oil feedstock and produced carbon black, as well as the production rate of the carbon black, as follows:

(1) measure daily the sulfur content by weight of the carbon black oil in the feed to each production unit according to the requirements of §112.245 of this title (relating to Approved Test Methods);

(2) for each grade of carbon black produced, measure daily the sulfur content by weight of the carbon black produced by each carbon black production unit according to the requirements of §112.245 of this title; and

(3) determine hourly the amount of each grade of carbon black produced by each carbon black production unit.

(c) Install, calibrate, maintain, and operate one or more totalizing fuel flow meters, with an accuracy of ± 5%, to continuously measure the feed rate of carbon black oil feedstock supplied to each carbon black production unit.

(d) Install, calibrate, maintain, and operate totalizing tail gas flow meters, with an accuracy of ± 5%, to continuously measure the volumetric flow rate of tail gas to each tail gas combustion device covered under §112.242 of this title (relating to Control Requirements).

(e) Continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgment, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

(f) Calculate total SO<sub>2</sub> emissions from each carbon black production unit using the equation in subsection (j) of this section which assumes that all the sulfur in the carbon black oil feedstock, which is not accounted for by sulfur in the carbon black product, is converted to SO<sub>2</sub>.

(g) If EPN New Flare (New-Flare) is not authorized, constructed, and operated, demonstrate compliance with the allowable emission requirements of §112.242 of this title for EPN 121 (Plant 1 Dryer Stack), EPN 122 (Plant 2 Dryer Stack), and EPN Flare-1 (Plant 1, Unit 1 Primary Bag Filter Flare) by calculating the actual hourly emissions of SO<sub>2</sub> by using the mass balance approach in subsection (j) of this section as well as the ratio of the total volumetric flow of tail gas to the boilers or flare versus the total volumetric flow of tail gas and the ratio of the total volumetric flow of tail gas to the dryers versus the total volumetric flow of tail gas.

(h) If EPN New Flare (New-Flare) is authorized, constructed, and operated, demonstrate compliance with the applicable emission re-

quirements of §112.242 of this title for EPN 121 (Plant 1 Dryer Stack), EPN 122 (Plant 2 Dryer Stack), and EPN New Flare (New Flare) by calculating the actual hourly emissions of SO<sub>2</sub> by using the mass balance approach in subsection (j) of this section as well as the ratio of the volumetric flow of tail gas to the boilers or flare versus the total volumetric flow of tail gas and the ratio of the total volumetric flow of tail gas to the dryers versus the total volumetric flow of tail gas.

(i) Actual emissions of SO<sub>2</sub> from each EPN specified under §112.242 of this title for each operational scenario occurring during any block one-hour period must be determined on a block one-hour average.

(j) Calculate total SO<sub>2</sub> emissions from each production unit using the following equation.

Figure: 30 TAC §112.243(j)

§112.244. Testing Requirements.

(a) Perform an initial demonstration of compliance test on the emission points specified in §112.242(b) - (d) of this title (relating to Control Requirements) for sulfur dioxide (SO<sub>2</sub>), while the associated facilities are firing tail gas, except for flares, by the compliance date in §112.248 of this title (relating to Compliance Schedules).

(b) Use the methods provided in §112.245 of this title (relating to Approved Test Methods) for the initial demonstration of compliance test required under subsection (a) of this section.

(c) During stack testing, operate the facility at the maximum rated capacity, or as near thereto as practicable.

(d) Conduct additional performance testing requested by the executive director using test methods allowed in §112.245 of this title.

(e) When analysis of produced carbon black, carbon black oil, and fuels, including but not limited to tail gas, is required for monitoring under §112.243 of this title (relating to Monitoring Requirements), the owner or operator shall use a test method in §112.245 of this title for the analysis.

§112.245. Approved Test Methods.

(a) Tests required under §112.244 of this title (relating to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in §60.8(b) (36 *Federal Register* (FR) 24877, published Dec. 23, 1971, as amended through 81 FR 59809, published Aug. 30, 2016).

(b) Sulfur dioxide (SO<sub>2</sub>) in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(c) For flares subject to emissions limitations or standards in §112.242 of this title (relating to Control Requirements), the owner or operator shall use flare test methods and procedures in 40 CFR §60.104a (73 FR 35867, published June 24, 2008 as amended 77 FR 56470, published September 12, 2012 and 80 FR 75231, published December 1, 2015) as if the federal rules apply to carbon black plants.

(d) Sulfur content of fuels and carbon black oil must be determined using American Society for Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition.

(e) Sulfur content of carbon black must be determined using ASTM Test Method D1619.

(f) Alternate test methods as approved by the executive director and the EPA may be used.

§112.246. Recordkeeping Requirements.

The owner or operator shall maintain records sufficient to demonstrate compliance with each applicable requirement for a minimum of five years, including but not limited to:

(1) records in units of pounds per hour (lb/hr) of production of carbon black for each grade of carbon black from each carbon black production unit;

(2) daily records of sulfur content by weight of the carbon black oil feedstock;

(3) daily records of sulfur content by weight of the carbon black produced for each grade of carbon black produced by each carbon black production unit;

(4) records of continuous carbon black oil feedstock flow rates for each carbon black production unit;

(5) records of continuous tail gas volumetric flow rates to each tail gas combustion device covered by §112.242 of this title (relating to Control Requirements);

(6) for each block one-hour period of operation of a carbon black production unit, the required mass balance calculations of emissions of SO<sub>2</sub> from each EPN for those sources in operation without a continuous emissions monitoring system (CEMS) for SO<sub>2</sub> and for control devices;

(7) the continuous emissions monitoring data of emissions of SO<sub>2</sub> for each EPN for those sources in operation with a CEMS for SO<sub>2</sub>; and

(8) copies of required emission test data and records.

§112.247. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.242 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with an authorized maintenance, startup, and shutdown activity or malfunction of an affected facility or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each stack test report to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO<sub>2</sub>) nonattainment area has failed to attain the 2010 one-hour SO<sub>2</sub> National Ambient Air Quality Standard pursuant to Federal Clean Air Act § 179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contin-

gency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO<sub>2</sub> sources subject to §112.240 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO<sub>2</sub> emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain, including a review and consideration of, at a minimum, hourly mass emissions of SO<sub>2</sub> from each SO<sub>2</sub> source subject to this division; the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO<sub>2</sub> readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any exceptional event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.248. Compliance Schedules.

The owner or operator of a source subject to §112.240 of this title (relating to Applicability) shall comply with the requirements of this division as soon as practicable, but no later than January 1, 2025.

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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For further information, please call: (512) 239-0600



## SUBCHAPTER G. REQUIREMENTS IN THE NAVARRO COUNTY NONATTAINMENT AREA

### 30 TAC §§112.300 - 112.308

#### Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a

general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The proposed new sections implement TWC, §5.103 and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017 and 382.021.

§112.300. Applicability.

(a) The requirements in this subchapter apply to affected sources at the Arcosa Lightweight Streetman site (Regulated Entity Number (RN) RN100211283) in the Navarro County sulfur dioxide (SO<sub>2</sub>) nonattainment area. Affected sources will remain subject to this subchapter regardless of ownership, operational control, or other documentation changes. Once approved by the United States Environmental Protection Agency (EPA), the requirements in section continue to apply until the EPA approves their removal.

(b) The affected source is designated by emission point number (EPN) and source name used in the site's New Source Review (NSR) permit as issued on the specified date. The affected source is EPN E3-1, Kiln Scrubber Stack, in New Source Review Permit 5337 dated May 29, 2020. This designation must continue to be used as the EPN for the lightweight aggregate kiln or any control device for SO<sub>2</sub>, regardless of any changes made to the lightweight aggregate kiln or its control system.

§112.301. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this subchapter have the meanings commonly used in the field of air pollution control. The following meanings apply in this subchapter unless the context clearly indicates otherwise.

(1) Lightweight aggregate kiln--A rotary kiln used to produce lightweight aggregate material. Any calciner or other associated devices used with the kiln for production are included as part of the kiln.

(2) Lightweight aggregate material--Minerals, rock materials, rock-like products, and byproducts of manufacturing processes, which are used as bulk fillers in lightweight structural concrete, concrete building blocks, precast structural units, road surfacing materials, plaster aggregates, and insulating fill, or other similar materials

(3) Navarro County sulfur dioxide (SO<sub>2</sub>) nonattainment area--The portion of Navarro County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO<sub>2</sub> National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021 (86 *Federal Register* 16055), effective April 30, 2021.

(4) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

§112.302. Control Requirements.

(a) The owner or operator may not change the Regulated Entity Number (RN) or the emission point number (EPN) designation of a source subject to §112.300 of this title (relating to Applicability) or otherwise contravene any of the control requirements in this section without the prior approval of the executive director and the United States Environmental Protection Agency (EPA).

(b) The EPN E3-1 (Kiln Scrubber Stack) and the associated lightweight kiln must emit all exhaust gases through a stack that is at least 35.052 meters tall and must be located at Universal Transverse Mercator (UTM) coordinates UTM East Meters 750666.0 and UTM North Meters 3533945.0 in UTM Zone 14.

(c) Emissions from EPN E3-1 (Kiln Scrubber Stack) and lightweight aggregate kiln may not exceed 248.00 pounds per hour (lb/hr) sulfur dioxide (SO<sub>2</sub>), except as provided for in subsection (d) of this section, the temperature of the exhaust gas exiting from the stack may not fall below 125 degrees Fahrenheit, and the velocity of the exhaust gas exiting from the stack may not drop below 65 feet per second (ft/s).

(d) If the stack temperature is at least 150 degrees Fahrenheit and the exhaust velocity is 66 ft/s or greater, emissions from EPN E3-1 (Kiln Scrubber Stack) and lightweight aggregate kiln may not exceed 283.00 lb/hr SO<sub>2</sub>.

(e) The fuel used in the lightweight aggregate kiln must be coal or petroleum coke for which the sulfur content is determined as specified in §112.303 of this title (relating to Monitoring Requirements), pipeline quality natural gas, or a combination of these fuels.

(f) The total sulfur content of all fuel burned in the lightweight aggregate kiln may not exceed 200.00 lb/hr.

(g) The owner or operator may request an alternative SO<sub>2</sub> emission limit if dispersion modeling and analysis consistent with the most recent attainment demonstration confirms the alternative limit will not increase the modeled regulatory design value in the nonattainment area. The alternative limit and any deviations from the modeling methodology from the most recent attainment demonstration must be approved by the executive director and the EPA.

§112.303. Monitoring Requirements.

The owner or operator shall monitor the following parameters of the lightweight aggregate kiln, the fuels combusted, and the raw materials treated in the kiln:

(1) the amount of shale and any other raw material processed each hour;

(2) the amount of each type of fuel used during each hour;

(3) the total sulfur content of the natural gas at least monthly; an analysis provided by the supplier of the natural gas is sufficient for this monitoring requirement;

(4) the average sulfur content of coal and petroleum coke combusted each week; an analysis provided by the supplier of the coal or petroleum coke is sufficient for this monitoring requirement;

(5) the average total sulfur content of the shale and any other raw material processed each week from all sources; for any raw material supplied from a source not affiliated with the owner or operator, an analysis provided by the supplier of a raw material is sufficient for this monitoring requirement;

(6) continuous monitoring of the temperature and velocity of exhaust gases at the outlet after the control device, if installed, or at the outlet of the stack from the kiln or any bypass, if present; and

(7) continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission source operates; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored source is in operation.

§112.304. Testing Requirements.

(a) By the compliance date in §112.308 of this title (relating to Compliance Schedules), the owner or operator shall conduct a stack test to determine the current emission rate from the lightweight aggregate kiln, unless testing in subsection (b) of this section has been conducted.

(b) After installation of any control device for sulfur dioxide on or after the effective date of this rule, the owner or operator shall conduct a stack test to determine the control efficiency of the control device within 60 days of installation.

(c) If the kiln or the control device is modified after the compliance date, including but not limited to addition of a control device, or if there is a change of the raw material used, the owner or operator shall conduct a stack test within 60 days.

(d) Any stack test conducted under subsections (a) - (c) of this section must be conducted while the lightweight aggregate kiln is operating at full load and while raw material and fuels with the maximum anticipated sulfur content are in use.

(e) When analysis of fuels is required for monitoring under §112.303 of this title (relating to Monitoring Requirements), the owner or operator shall use a test method in §112.305(c) of this title (relating to Approved Test Methods) for the analysis.

(f) The owner or operator shall analyze the shale and any other raw material treated in the lightweight aggregate kiln using a method suitable for the specific material. Prior to the initial use of each test method, the owner or operator shall submit the test method to the executive director and receive approval for its use for the specific raw material.

(g) The owner or operator shall conduct additional performance testing, if requested by the executive director. All performance tests must be conducted using test methods allowed in §112.305 of this title.

§112.305. Approved Test Methods.

(a) Sulfur dioxide (SO<sub>2</sub>) in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 Code of Federal Regulations (CFR), Part 60, Appendix A).

(b) Stack tests must be conducted using a method in subsection (a) and EPA Test Method 2 (40 CFR Part 60, Appendix A) for exhaust gas flow and following the measurement site criteria of EPA Test Method 1, §11.1 (40 CFR Part 60, Appendix A), or EPA Test Method 19 (40 CFR Part 60, Appendix A) for exhaust gas flow in conjunction with the measurement site criteria of Performance Specification 2, §8.1.3 (40 CFR Part 60, Appendix B).

(c) Sulfur content of fuels must be determined using American Society for Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition.

(d) Sulfur content of shale and other raw materials processed in the lightweight aggregate kiln must be tested using a method approved by the executive director.

(e) Alternate methods as approved by the executive director and the EPA may be used.

§112.306. Recordkeeping Requirements.

The owner or operator shall maintain, for a minimum of five years, records sufficient to demonstrate compliance with all applicable requirements in this subchapter, including but not limited to:

- (1) hourly records of the amount of each fuel used;
- (2) records of the results of each monthly analysis of the natural gas used;
- (3) records of the results of each weekly analysis of the coal and of the petroleum coke combusted;
- (4) hourly records of the amounts of shale and other raw materials processed in the lightweight aggregate kiln;
- (5) records of the continuous monitoring of exhaust gas temperature and velocity from the appropriate stack(s);
- (6) records of calculations of the sulfur content of all fuels combusted and raw materials processed each hour, which are calculated by multiplying the sulfur content of each fuel or raw material by the amount consumed in an hour and summing the results for all materials;
- (7) records of mass balance calculations of the amounts of sulfur emitted on an hourly basis, which is calculated by multiplying the summed sulfur contents in paragraph (6) of this subsection by two to convert the weight of sulfur to the weight of sulfur dioxide;
- (8) records of any exceedance of the sulfur dioxide emission limits or the stack parameters associated with an emission limit in §112.302 of this title (relating to Control Requirements); and
- (9) a copy of each stack test conducted and associated records.

§112.307. Reporting Requirements.

(a) If an affected source exceeds the applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

- (1) the date that each exceedance or failure to meet a required stack parameter occurred;
- (2) an explanation of the exceedance or failure to meet a required stack parameter;
- (3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with an authorized MSS activity for or malfunction of an affected facility or control system;
- (4) a description of the action taken, if any; and
- (5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each stack test report to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the United States Environmental Protection Agency (EPA) that the Navarro County sulfur dioxide (SO<sub>2</sub>) nonattainment area has failed to attain the 2010 one-hour SO<sub>2</sub> National Ambient Air Quality Standard pursuant to Federal Clean Air Act § 179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of the SO<sub>2</sub> sources subject to §112.300 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO<sub>2</sub> emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain, including a review and consideration of, at a minimum, hourly mass emissions of SO<sub>2</sub> from each SO<sub>2</sub> source subject to this subchapter; the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO<sub>2</sub> readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any exceptional event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.308. Compliance Schedules.

The owner or operator of the Arcosa Lightweight Streetman site (Regulated Entity Number 100211283) shall comply with the requirements of this subchapter as soon as practicable, but no later than January 1, 2025.

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 April 14, 2022.

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0600



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 4. SCHOOL LAND BOARD

#### CHAPTER 155. LAND RESOURCES

##### SUBCHAPTER A. COASTAL PUBLIC LANDS

###### 31 TAC §155.5, §155.15

The School Land Board (Board) proposes amendments to Chapter 155 in Texas Administrative Code (TAC) Title 31, Part 4, Chapter 155, Subchapter A, concerning Coastal Public Lands. The Board proposes the amendment of §155.5, concerning Registration of Structures, to delete a reference to §155.9, which is being repealed in this issue of the *Texas Register*. The Board

also proposes amendments to §155.15, concerning Fees, to correct the footnotes to the tables that list fees for easement and permits on coastal public land, more specifically for Residential Use, Categories I, II, and III.

#### Explanation of Proposed Amendments

The amendment of §155.5(d)(4)(C) is proposed since the subsection requires compliance with §155.9, which is being repealed. Therefore, the subsection can be deleted.

The amendment of §155.15 is proposed to correct the footnotes of Residential Use Category Tables I-III, concerning Fees. The footnotes were inadvertently changed in a previous amendment which caused the commercial fee rate to be applicable to residential construction projects. The proposed amendments will return the rental amounts to what existed prior to the latest rule change. The proposed amendments to the fee tables in §155.15(b)(1)(C)(i) - (iii) will correct the footnote 2(-b-) of each table to specify that existing fill permitted after August 15, 1995 is \$0.10 per square foot, not \$0.32 per square foot as currently incorrectly designated, or that the fill formula should be used. In addition, the proposed amendment would change the footnote 2(-c-) of each table to change existing fill at renewal from 120% back to 110% of the previous contract fill rate for each five-year period.

#### Fiscal and Employment Impacts

The Board has determined that for each of the first five years that the proposed amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules. The Board has determined that the proposed amendments will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals since the amendments would decrease costs to persons required to comply with the rules. The amendments to §155.15 correct an inadvertent increase in rent and fees and will save applicants money. Accordingly, an economic impact statement or regulatory flexibility analysis is not required. The proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

#### Public Benefit

The Board has determined that the proposed amendments will benefit the public by promoting greater efficiency in the administration of the coastal public land program, reducing the time and effort required to authorize certain construction projects on coastal public land, and providing the public with greater clarity regarding the process since all applicable regulations for these projects will be the same throughout the state. The amendments will also correct footnotes that inadvertently raised rent and fees on residential structures and will return the rates to their previous amounts.

#### Environmental Regulatory Analysis

The Board has evaluated the proposed amendments in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or

the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

#### Government Growth Impact Statement

The Board has evaluated the proposed amendments in accordance with Government Code, §2001.0221. For each of the first five years that the proposed amendments are in effect, the amendments will not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; create a new regulation; increase or decrease the number of individuals subject to applicability of the rules; or adversely affect the state's economy.

#### Takings Impact Assessment

The Board has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings assessment is required. The Board has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

#### Coastal Management Program Analysis

The Board has reviewed the proposed amendments for consistency with the Texas Coastal Management Program (CMP), in accordance with Texas Natural Resources Code, §33.2051(d), and 31 Texas Administrative Code §505.11(a)(1), relating to Actions and Rules Subject to the Coastal Management Program. The Board determined that since this rulemaking is procedural in nature and would have no substantive effect on agency actions subject to the CMP, the rulemaking is consistent with the applicable CMP goals and policies.

#### Request for Public Comment

Written comments should be submitted to Walter Talley, Office of General Counsel, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701, or faxed (512) 463-6311 or emailed to [walter.talley@glo.texas.gov](mailto:walter.talley@glo.texas.gov), no later than 30 days following publication.

#### Statutory Authority

The amendments are proposed under Texas Natural Resources Code (TNRC) §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce Chapter 33, Texas Natural Resources Code.

Texas Natural Resources Code §§33.101 - 33.136 are affected by the proposed amendments.

#### §155.5. Registration of Structures.

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

(d) The construction criteria for piers pursuant to Texas Natural Resources Code §33.115 shall include the following:

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

(4) A pier or dock shall extend perpendicular from a point on the shoreline, which is not less than ten feet from the adjacent littoral property line, unless such a design:

(A) would obstruct navigation; or

(B) would unreasonably interfere with an adjoining littoral property owner's use of the waterfront. [~~waterfront;~~]

~~[(C) or is otherwise in compliance with §155.9(m)(2)(B) in this title (relating to Special Bay Area Guidelines-Clear Lake).]~~

(e) - (h) (No change.)

#### §155.15. Fees.

(a) (No change.)

(b) Board fees and charges. The board is authorized and required under the Texas Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable. The board will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in paragraph (1)(C) of this subsection. The greater of the fixed fee or formula rate will be charged except in the calculation of fees for residential use, Category II and residential use, Category III, where only the fixed rate method will be used. The board may adopt an escalation schedule that will allow for escalation of annual fees based on the term of a coastal lease or coastal easement.

##### (1) Rental and Fees

(A) Structure registration. Structure registration fee is required for private piers or docks that are 115 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Texas Natural Resources Code, §33.115. Though board approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure.

(i) application fee: \$25 (per occurrence for new, amendment and assignment applications).

(ii) annual rent: none.

(B) Coastal lease. The board may grant coastal leases for public purposes as prescribed by the Texas Natural Resources Code, §§33.103(1), 33.105 and 33.109. The application fee and annual rent shall be negotiable.

(C) The following tables list the rental fees for easements and permits on coastal public land.

(i) Residential Use, Category I.

Figure: 31 TAC §155.15(b)(1)(C)(i)  
[Figure: 31 TAC §155.15(b)(1)(C)(i)]

(ii) Residential Use, Category II.

Figure: 31 TAC §155.15(b)(1)(C)(ii)  
[Figure: 31 TAC §155.15(b)(1)(C)(ii)]

(iii) Residential Use, Category III.

Figure: 31 TAC §155.15(b)(1)(C)(iii)  
[Figure: 31 TAC §155.15(b)(1)(C)(iii)]

(iv) - (v) (No change.)

(2) - (7) (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 April 13, 2022.

TRD-202201397  
Mark Havens  
Chief Clerk, Deputy Land Commissioner  
School Land Board  
Earliest possible date of adoption: May 29, 2022  
For further information, please call: (512) 475-1859



### 31 TAC §155.9

The School Land Board (Board) proposes the repeal of §155.9, relating to Special Bay Area Guidelines-Clear Lake, in Texas Administrative Code (TAC) Title 31, Part 4, Chapter 155, Subchapter A, concerning Coastal Public Lands.

#### *Explanation of Proposed Repeal*

Section 155.9 applies to all state-owned land and flats in the water body known as Clear Lake in Galveston and Harris Counties, Texas. Its regulations apply to the construction of structures such as piers, docks, and marinas, and to placing fill or dredging in this area. The majority of the regulations in §155.9 are duplicative of other applicable regulations for these activities. Once the section is repealed, any person who applies to undertake these activities in Clear Lake will still be required to obtain authorization from both the General Land Office (GLO) and US Army of Corps of Engineers (USACE) prior to construction.

Regulations in §155.9 are duplicative of other sections of 31 TAC Ch. 155, GLO contracts, and USACE permits. For example, USACE permits also prevent navigation hazards due to pier lengths or widths, and the required USACE dredging permits also prohibit adverse impacts to habitat.

In addition, the section has notice requirements above and beyond what is required for similar projects in the rest of the state. These requirements were put in place at the request of local governments when these regulations first went into effect in 1979. Currently, input from local governments subject to this section indicates that these notice requirements are no longer desired as public comments are not received on these projects. The notice requirements subject projects in this area to additional costs and time constraints that applicants in other parts of the state do not have. Also, these construction projects are subject to the USACE notice requirements; therefore, the notice provisions in the subsection that is being repealed are largely duplicative.

#### *Fiscal and Employment Impacts*

The Board has determined that for each of the first five years that the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules. The Board has determined that the proposed repeal will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals since the amendments would decrease costs to persons required to comply with the rules. The proposed repeal of §155.9 will be cost saving for applicants since it eases duplicative, expensive public notice requirements and streamlines the process. Accordingly, an economic impact statement or regulatory flexibility analysis is not required. The proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

#### *Public Benefit*

The Board has determined that the proposed repeal will benefit the public by promoting greater efficiency in the administration of the coastal public land program, reducing the time and effort required to authorize certain construction projects on coastal public land, and providing the public with greater clarity regarding the process since all applicable regulations for these projects will be the same throughout the state. The amendments will also correct footnotes that inadvertently raised rent and fees on residential structures and will return the rates to their previous amounts.

#### *Environmental Regulatory Analysis*

The Board has evaluated the proposed repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

#### *Government Growth Impact Statement*

The Board has evaluated the proposed repeal in accordance with Government Code, §2001.0221. For each of the first five years that the proposed repeal is in effect, the repeal will not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; create a new regulation; increase or decrease the number of individuals subject to applicability of the rules; increase or decrease in fees paid to the agency; expand, limit or repeal any existing regulation; or adversely affect the state's economy.

#### *Takings Impact Assessment*

The Board has evaluated the proposed repeal to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings assessment is required. The Board has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

#### *Coastal Management Program Analysis*

The Board has reviewed the proposed repeal for consistency with the Texas Coastal Management Program (CMP), in accordance with Texas Natural Resources Code, §33.2051(d), and 31 Texas Administrative Code §505.11(a)(1), relating to Actions and Rules Subject to the Coastal Management Program. The Board determined that since this rulemaking is procedural in nature and would have no substantive effect on agency actions subject to the CMP, the rulemaking is consistent with the applicable CMP goals and policies.

#### *Request for Public Comment*

Written comments should be submitted to Walter Talley, Office of General Counsel, Texas General Land Office, 1700 N. Con-

gress Avenue, Austin, Texas 78701, or faxed (512) 463-6311 or emailed to [walter.talley@glo.texas.gov](mailto:walter.talley@glo.texas.gov), no later than 30 days following publication.

#### Statutory Authority

The repeal is proposed under Texas Natural Resources Code (TNRG) §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce Chapter 33, Texas Natural Resources Code.

Texas Natural Resources Code §§33.101 - 33.136 is affected by the proposed amendments.

#### §155.9. Special Bay Area Guidelines-Clear Lake.

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 April 13, 2022.

TRD-202201398

Mark Havens

Chief Clerk, Deputy Land Commissioner

School Land Board

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 475-1859



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 16. COMMERCIAL DRIVER LICENSE

##### SUBCHAPTER B. APPLICATION REQUIREMENTS AND EXAMINATIONS

###### 37 TAC §16.31

The Texas Department of Public Safety (the department) proposes amendments to §16.31, concerning Third-Party Skills Testing Program. Amendments to this rule are necessary to comply with revisions to the Federal Motor Carrier Safety Administration's (FMCSA) guidance on 49 Code of Federal Regulations (CFR) 383.75. Additional amendments are made pursuant to the Eighty-seventh Texas Legislature, House Bill 3395 regarding amendments to Texas Transportation Code, §522.023 and third-party commercial driver license (CDL) knowledge and skills testing.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the ability for third-party CDL testers to administer the CDL knowledge exam.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Charles McInnis, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLRulecomments@dps.texas.gov](mailto:DLRulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code.

Texas Government Code, §411.004(3), and Texas Transportation Code, §522.005 and §522.023, are affected by this proposal.

#### §16.31. Third-Party Skills And Knowledge Testing Program.

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

(1) Authorized organization--An entity that has entered into a Memorandum of Understanding with the department to administer the knowledge test, [driving] skills test, or both for a commercial driver license on the department's behalf. This is equivalent to a third party tester in accordance with 49 CFR 383.5.

(2) Examiner--An individual certified by the department to conduct a knowledge test, skills test, or both. This is equivalent to a third party [skills test] examiner in accordance with 49 CFR 383.5.



(3) Knowledge test--Includes any written test required for a commercial driver license, including the addition or removal of an endorsement or restriction, excluding the Hazmat test.

(b) An organization is eligible to enter into a Memorandum of Understanding with the department and to administer a knowledge test, skills test, or both for a commercial driver license if it:

(1) Complies with 49 CFR 383.75; and

(2) Has been in business or operation in the State of Texas for at least 365 days prior to the execution of the Memorandum of Understanding; and

(3) Maintains at least one permanently occupied structure with a permanent Texas street mailing address.

(c) An individual employed by an authorized organization is eligible to become an examiner and conduct commercial driver license knowledge test, skills tests, or both if he or she makes application with the department and:

(1) Complies with 49 CFR 384.228; and

(2) For skills testing, holds [~~Holds~~] the equivalent class of Texas commercial driver license with endorsements to administer like skills tests; and

(3) Is domiciled in the State of Texas.

(d) The department may suspend for up to one year or revoke permanently, an organization's or examiner's authorization to conduct commercial knowledge testing or skills testing for failure to comply with any part of:

(1) The Memorandum of Understanding; or

(2) 49 CFR 383.75; or

(3) 49 CFR 384.228.

(e) Unless an authorized organization is a governmental agency, the authorized agency must secure and maintain a continuous security bond in the principal sum of \$25,000 per examiner, underwritten by a company authorized to do business in the State of Texas, which represents a sufficient amount to pay for re-testing drivers in the event that the organization or one or more of its examiners are involved in fraudulent activities related to the knowledge testing or skills testing conducted by [of] its employees or members. However, the aggregate liability of the surety for all breaches of the condition of the bond in no event shall exceed the principal sum of \$25,000 per examiner. The surety on any bond may cancel the bond on giving 30 days' notice in writing to the State of Texas and shall be relieved of liability for any breach of any conditions of the bond that occurs after the effective date of cancellation.

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 April 18, 2022.

TRD-202201440

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 424-5848



## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

#### 37 TAC §651.222

The Texas Forensic Science Commission ("Commission") proposes a new rule to 37 Texas Administrative Code (TAC) §651.222 to establish a voluntary forensic analyst licensing program for document examination analysts and forensic anthropologists. The new rule is necessary to reflect adoptions made by the Commission at its January 21, 2022 quarterly meeting. The proposal is made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a(c) to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation requirements.

**Fiscal Note.** Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. The proposed new rule provides a voluntary license option for forensic practitioners in disciplines not required to be accredited or licensed under Texas law. There are no mandatory requirements for the voluntary forensic analyst licensing program established by the rules.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the proposed new rule does not impose any direct costs or fees on municipalities in rural communities. There are no mandatory requirements for the voluntary forensic analyst licensing program established by the rules.

**Public Benefit/Cost Note.** Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed new rule is in effect, the anticipated public benefit will be an option for forensic practitioners not eligible for mandatory licensure in the State to achieve a voluntary license by the Commission. Voluntary license requirements encourage forensic practitioner participation in continuing education requirements, compliance with the Texas Forensic Analyst and Crime Laboratory Manager's Code of Professional Responsibility, and a general forensic analyst licensing exam that includes a required understanding of forensic analyst disclosure obligations designed to improve the integrity and reliability of forensic science in Texas courtrooms for practitioners not mandatorily subject to these licensing components.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** As required by the Government Code § 2006.002(c) and (f), Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed new rule will not have an adverse economic effect on any small or micro business because the rule does not impose any economic costs to these businesses. There are no mandatory requirements for the voluntary forensic analyst licensing program established by the rules.

Takings Impact Assessment. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043. The proposed new rule provides a voluntary license option for forensic practitioners in disciplines not required to be accredited or licensed under Texas law. There are no mandatory requirements for the voluntary forensic analyst licensing program established by the rules.

Government Growth Impact Statement. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code §2001.221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) while the proposed rule does require a fee for voluntary licensure the fee is optional not mandatory and covers expenses for administration of the Commission's voluntary licensure program; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 7) the proposed rule has a neutral effect on the state's economy. The amendment does not expand any forensic analyst licensing requirement under the current program, but rather provides a voluntary license option for practitioners in forensic disciplines not subject to accreditation and licensing rules in Texas where they were otherwise ineligible.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that there are no anticipated increased costs to regulated persons as the proposed new rule is not mandatory licensing requirements.

The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by May 31, 2022 to be considered by the Commission.

Statutory Authority. The new rule is proposed under Tex. Code Crim. Proc. art 38.01 §4-a(c).

Cross reference to statute. The proposal establishes new rule 37 TAC §651.222.

§651.222. Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(a) Issuance. The Commission may issue an individual's voluntary forensic analyst license under this section.

(b) The following forensic disciplines are eligible for a voluntary forensic analyst license:

- (1) forensic anthropology; and

(2) document examination, including document authentication, physical comparison, and product determination.

(c) Application. Before being issued a voluntary forensic analyst license, an applicant shall complete and submit to the Commission a current forensic analyst license application and provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) Minimum Education Requirements.

(1) Document Examination Analyst. An applicant for a voluntary forensic analyst license in document examination must have a high school diploma or equivalent degree or higher (i.e., baccalaureate or advanced degree).

(2) Forensic Anthropologist. An applicant for a voluntary forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any minimum education requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(3) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(e) Specific Coursework Requirements.

(1) General Requirement for Statistics. An applicant for any voluntary forensic analyst license must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Forensic Discipline Specific Coursework Requirements.

(A) Document Examination Analyst. An applicant for a voluntary forensic analyst license must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(B) Forensic Anthropologist. An applicant for a voluntary forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any specific coursework requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(3) Exemptions from Specific Coursework Requirements. Previously Licensed Document Examination Analyst Exemption. An applicant for a voluntary forensic analyst license previously licensed by the Commission when licensure was mandatory for the discipline is exempt from any specific coursework requirements in this subsection.

(f) General Forensic Analyst Licensing Exam Requirement for Voluntary License Applicants.

(1) Exam Requirement. An applicant for a voluntary forensic analyst license must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice of the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(2) Credit for Pilot Exam. If an individual passes a Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a voluntary or mandatory Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this subsection.

(g) Proficiency Testing Requirement.

(1) Requirement for Applicants Employed by an Accredited Laboratory. An applicant who is employed by an accredited laboratory must be routinely proficiency-tested in accordance with and on the timeline set forth by the laboratory's accrediting body proficiency testing requirements.

(2) Requirement for Applicants Not Employed at an Accredited Laboratory. An applicant who is employed by an entity other than an accredited laboratory must provide proof of successful completion of annual external proficiency testing. If no external proficiency testing is available in the forensic discipline for which the applicant seeks licensure, the applicant must provide proof of successful completion of inter-organizational comparison exercise(s) established with at least one other entity.

(3) A signed certification by the laboratory or entity's authorized representative that the applicant has satisfied the applicable proficiency testing requirements in paragraph (1) of this subsection as of the date of the analyst's application must be provided on the Proficiency Testing Certification form provided by the Commission. For applicants not yet required to be proficiency tested pursuant to the timeline set forth by the accrediting body, the laboratory's authorized representative shall so certify on the form provided by the Commission.

(4) Applicants not employed by an accredited laboratory must submit written proof of successful completion of external proficiency testing from a Commission-recognized proficiency test provider.

(5) Applicants not employed by an accredited laboratory seeking approval of inter-organizational comparison exercise(s) must seek prior approval of the exercise(s) from the Commission and provide written documentation that the applicant performed in conformance with expected consensus results for the comparison exercise(s).

(h) License Term and Fee.

(1) A Voluntary Forensic Analyst license shall expire two years from the date the applicant is granted a license.

(2) Application Fee. A voluntary Forensic Analyst license applicant or current voluntary licensee shall pay the following fee(s) as applicable:

(A) Initial Application fee of \$220;

(B) Biennial renewal fee of \$200;

(C) License Reinstatement fee of \$220; or

(D) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts; and

(i) Voluntary Forensic Analyst License Renewal. Renewal of a Voluntary Forensic Analyst License. Applicants for renewal of a Voluntary Forensic Analyst License must comply with §651.208 of this subchapter (Forensic Analyst and Forensic Technician License Renewal).

(j) Voluntary Forensic Analyst License Expiration and Reinstatement. Expiration and Reinstatement of a Voluntary Forensic Analyst License. A Voluntary Forensic Analyst must comply with §651.209 of this subchapter (Forensic Analyst and Forensic Technician License Expiration and Reinstatement).

(k) Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a voluntary forensic analyst license does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

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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Leigh Tomlin  
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Texas Forensic Science Commission  
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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 20. TEXAS WORKFORCE COMMISSION**

**CHAPTER 809. CHILD CARE SERVICES**

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

- Subchapter A. General Provisions, §§809.1 and 809.2
- Subchapter B. General Management, §§809.13 - 809.16 and §§809.18 - 809.20
- Subchapter C. Eligibility for Child Care Services, §§809.41, 809.42, 809.44, 809.48, 809.50, 809.51, and 809.55
- Subchapter D. Parent Rights and Responsibilities, §§809.71 - 809.73, 809.75, and 809.78
- Subchapter E. Requirements to Provide Child Care, §§809.91 - 809.96
- Subchapter F. Fraud Fact-Finding and Improper Payments, §§809.112 and §809.115
- Subchapter G. Texas Rising Star Program, §§809.130 - 809.136

TWC proposes the following new section to Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §809.56

**PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of the proposed amendments to Chapter 809 is to implement House Bill (HB) 2607, HB 1792, Senate Bill (SB) 1555, 87th Texas Legislature, Regular Session (2021), and improve TWC's Child Care Services (CCS) program.

**House Bill 2607**

**Texas Rising Star Entry Level Rating**

HB 2607 amended Texas Government Code, §2308.3155 to require all regulated providers of TWC-funded CCS be included in the Texas Rising Star program and to require TWC to amend its Texas Rising Star program rules to include an Entry Level rating and a maximum length of time that a child care provider can participate at the Entry Level rating. Amended Texas Government Code, §2308.3155(b-2) requires TWC to develop a process to allow a child care provider to request a waiver to extend the length of time, which cannot exceed 36 months, that the child care provider may participate at the Entry Level rating. Amended Texas Government Code, §2308.3155(b-1) specifies that an Entry Level child care provider is not eligible for enhanced reimbursement rates available to Two-, Three-, and Four-Star certified child care providers.

Prior to the enactment of HB 2607, TWC's three-member Commission (Commission) amended Chapter 809 in January 2021 to adopt a Pre-Star child care provider designation and a requirement that all regulated CCS child care providers achieve that designation. The Commission is repealing the Pre-Star designation and replacing it with the legislatively mandated Texas Rising Star Entry Level designation.

**Mandatory Texas Rising Star Participation and Enhanced Reimbursement Rates**

Because amended Texas Government Code, §2308.3155(a) makes Texas Rising Star mandatory for regulated CCS providers, the new statutory language requires the definition of Texas Rising Star in §809.2 be amended to remove "voluntary" and to reflect that the program is required for CCS providers; and §809.91 be amended to require all regulated CCS providers participate in Texas Rising Star. Relative providers are not required to participate in Texas Rising Star and will continue to operate under the current rules for relative providers set forth in §809.91.

Additionally, because the Entry Level rating is intended to be a temporary designation and not eligible for enhanced reimbursement rates, the definition of a Texas Rising Star provider in §809.2 is amended to distinguish Entry Level child care providers from "certified" child care providers, reserving Texas Rising Star "certification" only for certifications at the Two-, Three-, and Four-Star level.

Also, amended Texas Government Code, §2308.3155(b-1) clarifies that providers at the Entry Level designation are not eligible for the enhanced rate, thus requiring that §809.20 be amended to include that only "certified" Texas Rising Star providers receive the enhanced reimbursement rate.

To implement the requirements of HB 2607, Subchapter G, Texas Rising Star Program is amended to include an Entry Level designation within the Texas Rising Star program. Amended Subchapter G includes the requirements to be considered for Entry Level designation based upon a child care provider's demonstration that it does not have excessive licensing findings.

**Eligibility to be Considered for Entry Level Rating**

Amended Texas Government Code, §2308.3155(b-1) stipulates that to qualify for the Entry Level rating, a child care provider must meet the minimum quality standards that qualify the child care provider to receive technical assistance and support under the Texas Rising Star program.

Subchapter G, §809.31(b) defines the basic requirements for Entry Level designation. A regulated provider, that is, providers licensed or registered with the Texas Health and Human Services Commission's Child Care Regulation (CCR) department (including an initial permit) or regulated by the US Military, are eligible to be considered for Entry Level Eligibility. This is the same basic criteria that was used in the former Pre-Star designation, which is now being repealed. If the child care provider is eligible to be considered for the Entry Level rating, the child care provider will then need to meet the new proposed points threshold for high and medium-high CCR deficiencies required for the Entry Level designation; and once designated as Entry Level, will be eligible for technical assistance as required by Texas Government Code, §2308.3155(b-1).

**Points Threshold for Meeting Entry Level Rating**

The Commission-established criteria for Entry Level designation described below will be set forth in the Texas Rising Star Guidelines.

To be designated as Entry Level, the Commission establishes a points threshold of 75 based on:

--points being assigned to CCR-weighted high and medium-high deficiencies received; and

--high-weighted deficiencies receiving a higher number of points (5 points each) than medium-high-weighted deficiencies (3 points each).

A child care provider's most recent 12-month CCR licensing history will be reviewed. Providers with initial permits or providers with fewer than 12 months of licensing history will be reviewed based on all available CCR licensing history.

#### Time Limits for Entry Level Rating

Amended Texas Government Code, §2308.3155(b-1) requires the Commission to establish, by rule, the maximum length of time a CCS provider can be at the Entry Level rating. The Commission amends Chapter 809 to establish a 24-month maximum time frame a CCS provider could be at the Entry Level designation. The CCS provider must achieve Texas Rising Star certification of at least the Two-Star level within the 24-month period, unless the provider requests, and TWC approves, a waiver extension as allowed by amended Texas Government Code, §2308.3155(b-2).

All CCS providers must meet Entry Level requirements, and once designated as Entry Level, will have a maximum of 24 months to attain star-level certification in Texas Rising Star. Entry Level providers will be reviewed for Texas Rising Star certification after their first 12 months. If an Entry Level provider is not certified as Texas Rising Star at that time, the provider will receive up to two six-month extensions as follows:

--During the first six months, providers will continue to receive CCS referrals.

--If a provider requires a second six-month extension, the provider may not receive any new family CCS referrals.

The intent of not allowing new family referrals during the last six months of the 24-month period is to minimize the likelihood that children are placed in a facility that ultimately fails to meet Texas Rising Star certification. This approach recognizes the importance of stable child care to children's healthy development. Children who were previously referred may continue to be served during the last six-month extension period.

The Commission notes that Entry Level providers can be assessed for certification at any time if they meet eligibility and screening requirements. At minimum, each Entry Level provider will be screened at 12 months to determine eligibility for assessment.

#### Entry-Level for Current CCS Providers

For providers that have existing agreements with Local Workforce Development Boards (Boards) to provide child care services, but do not meet the points threshold for Entry Level designation upon implementation of these rules, TWC will provide a period of six months in order for these providers to meet Entry Level requirements. If a current CCS provider fails to attain at least Entry Level status after six months, the provider will no longer be an eligible CCS provider and may apply for Entry Level designation at a later date.

#### Criteria for the Entry-Level Extension Waiver

Texas Government Code, §2308.3155(b-2) allows for up to an additional 36 months for a provider to remain at Entry Level and directs the Commission to establish the criteria for approving this Entry Level extension waiver. Amended Texas Government Code, §2308.3155(b-2) requires that the rules specify that approved waivers must not exceed 36 months.

The Commission amends Chapter 809 and establishes the following criteria for an Entry Level extension waiver. The provider must be:

--located in a child care desert (as defined in Texas Labor Code, §302.0461(b)(2)(A)(i), and in amended §809.2); or serving an underserved population as determined by the Agency;

--unable to meet the certification requirements due to a declared emergency/disaster; or

--unable to meet the certification requirements due to conditions that are outside the provider's control.

An underserved population could include limited availability of infant capacity or care for children with disabilities.

#### Texas Rising Star Providers on Suspension Status

Under the current rules, there is no requirement that a Texas Rising Star provider become recertified following the loss of certification. However, amended Texas Government Code, §2308.3155(b-1) requires that CCS providers must meet Texas Rising Star certification.

Because state statute requires providers participating in the CCS program to be certified as Texas Rising Star, a provider that has CCR screening or noncompliance issues may temporarily drop below a Two-Star level and fall into a new category of being a certified provider, but with a suspended certification status.

Providers placed on suspension status must continue to meet Entry Level requirements and be recertified within 12 months of being placed on suspension status. The provider will not be able to receive enhanced rates while on suspension status or be eligible for Entry Level designation.

Providers on suspension status will be eligible to request a reassessment after six months following the start of the suspension status if they meet certification eligibility and screening requirements. If the provider is not eligible to request a reassessment or is not certified at least at the Two-Star level by the sixth month of the suspension, the provider will not receive new family referrals during the remainder of the suspension period. However, TWC may approve the provider to accept new family referrals if the provider is located in a child care desert or serves an underserved population. The Commission notes that providers on suspension status can be assessed for certification at any time after the initial six months of suspension status in which they meet certification eligibility and screening requirements.

Texas Rising Star providers on suspension status and not achieving recertification by the end of the 12-month period are not eligible to provide TWC-funded child care services, are not eligible for Entry Level designation, and must subsequently meet Texas Rising Star certification eligibility and screening requirements in order to provide CCS.

#### Prekindergarten Partnerships

HB 2607 also amended Texas Labor Code, §302.00436 to require Boards to inform the local school districts and open-enroll-

ment charter schools in the local workforce development area (workforce area) regarding opportunities to partner with child care providers in the Boards' workforce areas to expand access to and provide facilities for prekindergarten (pre-K) programs.

Pursuant to Texas Labor Code, §302.00436 the Commission amends §809.14 (Coordination of Child Care Services) to require Boards to inform the local school districts/open-enrollment charter schools of opportunities to partner with child care providers to expand access to and provide facilities for pre-K programs.

The Commission also approved, with one-time stimulus funding, the hiring of local TWC staff to serve as a resource to support, expand, and enhance pre-K partnership settings that will focus on informing and engaging potential partners, and supporting and navigating the formalization of partnerships. During the time of this stimulus-funded TWC pre-K partnership initiative, this will allow for a collaborative approach, with the Boards, in meeting the requirements of HB 2607 and the needs of the community.

#### Contracted Slots Reporting Requirements

Finally, HB 2607 amended Texas Labor Code, §302.0461(d) to change the Board reporting requirements for contracted providers from every six months to every 12 months. On September 9, 2021, TWC issued Workforce Development (WD) Letter 19-21, which included the new 12-month reporting requirement. The Commission amends §809.96 (Contracted Slots Agreements) to change the Board reporting requirements for contracted providers from every six months to every 12 months.

#### House Bill 1792

##### Statewide Texas Rising Star Assessors

HB 1792 amended Texas Government Code, §2308.3155 to require TWC to competitively procure a single entity to oversee a statewide roster of qualified assessors to evaluate child care providers participating in the Texas Rising Star program during the initial certification process and at any other time during the child care provider's participation in the program.

Amended Texas Government Code, §2308.3155(d) requires amendments to Chapter 809, Subchapter G to separate the roles and responsibilities of Texas Rising Star assessments provided by the single statewide entity and mentoring services provided by Boards, as well as qualifications specific to assessors and mentors.

Specifically, §809.134 is amended to specify that both the Boards and TWC's designated assessment entity shall ensure that Texas Rising Star staff:

- meet the background check requirements; and
- complete the Texas Rising Star standards training, as described in the Texas Rising Star Guidelines.

The amended rules also specify that Boards ensure mentoring staff meet requirements for:

- minimum education;
- work experience requirements; and
- attaining mentor microcredentialing, as described in the Texas Rising Star Guidelines.

The amended rules specify that TWC's designated Texas Rising Star assessment entity ensure that assessors attain and main-

tain the Texas Rising Star Assessor Certification, which will replace the former minimum education and experience requirements for assessors.

Under current rules, Boards are allowed to have staff members who act as both mentors and assessors, as long as the staff does not mentor and assess the same child care provider. With the separation of assessors into a single entity, the amended rules continue this separation of duties to address situations in which an individual may be under contract with or be employed by a Board for mentoring services as well as under contract or employed by the single entity to conduct Texas Rising Star assessments, to ensure that no conflict of interest exists during the assessment process.

However, the Commission expects that communication and coordination among mentors and assessors continue. The contract with TWC's designated Texas Rising Star assessment entity will include specifications for communication with mentors, and TWC's contract with Boards will include requirements for coordination with assessors.

Additionally, current rule language places the responsibility regarding child care provider requests for a reconsideration of the child care provider's Texas Rising Star assessment on Boards. The amended rules continue the reconsideration practice but will require TWC's designated Texas Rising Star assessment entity, rather than the Boards, have a procedure for child care providers that request a reconsideration of their certification based on an assessment.

#### Senate Bill 1555

##### Age Groups for Reimbursement

SB 1555 amended Texas Government Code, §2308.315 to require Boards to establish graduated reimbursement rates that align TWC's age groups with CCR ratios and group sizes and to require higher rates in age groups with the lowest child-to-caregiver ratios. SB 1555 stipulates that the reimbursement rates must be in place no later than December 1, 2023.

The former §809.20 requires Boards to have maximum reimbursement rates for the following age groups:

- Infants ages 0 through 17 months;
- Toddlers ages 18 through 35 months;
- Preschool ages 36 through 71 months; and
- School ages 72 months and older.

The Commission amends §809.20 (Maximum Provider Reimbursement Rates) to require Boards to have maximum reimbursement rates that align with the CCR age groups for a Licensed Child Care Center (LCCC), as defined in 40 TAC §746.1601 and §746.1609. The new age groups will also be applied to licensed and registered homes. The new age groups are as follows:

- Infants ages 0 through 11 months;
- Infants ages 12 through 17 months;
- Toddlers ages 18 through 23 months;
- Toddlers age 2 years;
- Preschool age 3 years;
- Preschool age 4 years;
- Preschool age 5 years; and

--School ages 6 through 13 years.

In accordance with §809.20(a), which requires Boards to establish maximum reimbursement rates at or above a level established by the Commission and in accordance with state regulations, TWC will issue guidance requiring Boards to establish rates that are graduated to provide higher rates for the age groups with the lowest child-to-caregiver ratios as established in CCR regulations, pursuant to amended Texas Government Code, §2308.315.

Amended Texas Government Code, §2308.315 requires TWC to supply any demographic data needed by the Board to establish the rates. TWC supplies market rates, through the annual Market Rate Survey (MRS), for the previously defined age groups as a benchmark to assist Boards in establishing maximum reimbursement rates. TWC is working with the MRS contractor to ensure that the contractor can collect and analyze market rates based on the CCR age groups, and these rates will be included in the next MRS due in June 2022.

Additionally, implementing SB 1555 will require TWC's child care information system to align with the new age groups.

TWC is planning to replace the child care information system, The Workforce Information System of Texas (TWIST), with a new Child Care Case Management System (CCCMS). TWC will include the changes to implement SB 1555 in the requirements for the new CCCMS, scheduled to be completed in 2023.

The authors of SB 1555 recognized that implementation would require time for TWC to collect and analyze market rates data and make necessary information technology changes. As such, SB 1555 stipulates that implementation of the bill should be no later than December 1, 2023.

The Commission makes the provisions of the amended rules regarding age-group reimbursement rates effective on October 1, 2023, to align with the Board Contract Year 2024.

#### Rule Amendments for Program Improvements

Additionally, the Commission, with input from stakeholders, identified potential amendments to Chapter 809 for program improvements that will:

- standardize statewide policies for service delivery consistency;
- streamline the list of Board policy requirements;
- codify the current TWC waiver to allow job search at initial eligibility;
- update language regarding automated attendance reporting;
- strengthen child care provider payment requirements to align with the industry practice of prospective payments;
- include federal reporting requirements for providers charging parents above the parent share of cost (PSoC), if allowed by the Board; and
- make technical changes and clarifications.

#### Statewide Policies for Service Delivery Consistency

Chapter 809 allows Boards to establish policies for various aspects of the Child Care Services program, and those policies vary greatly among the 28 Boards.

To provide greater consistency in child care service delivery throughout the state, particularly for the management of waiting lists, assessing the PSoC, and general eligibility requirements,

the Commission is amending Chapter 809 to provide standard eligibility requirements statewide and ensure greater efficiency in service delivery for the following policy areas.

#### Statewide Waiting List Management

Section 809.18 requires Boards to maintain a list of parents waiting for child care services due to the lack of funding or lack of providers. The section requires Boards to have a policy that sets the frequency in which the parent information is updated and maintained on the waiting list. Board policies for requiring a parent to contact the Board to keep the child on the waiting list vary by Board and range from 30 to 180 days. This wide range in waiting list maintenance policies creates statewide inconsistencies in the accuracy of the number of children waiting for child care services.

The Commission amends §809.18 to require Boards to contact parents with children on the waiting list every three months and to remove the child from the waiting list if the parents indicate that child care services are no longer required or if they do not respond to the Board regarding the continued need for child care services.

As mentioned previously, TWC is planning to replace the child care information system in TWIST with a new CCCMS. The new CCCMS, scheduled to be completed in 2023, will have the ability to automate the process for contacting parents regarding the waitlist status. The Commission makes the provisions of the amended rules regarding contacting parents with children on the waiting list effective on October 1, 2023.

#### Statewide Parent Share of Cost Assessment

Federal Child Care Development Fund (CCDF) regulations at 45 CFR §98.45(k) require Lead Agencies to "establish, and periodically revise, by rule, a sliding fee scale(s) for families that receive CCDF." Regulations also require that the sliding fee scales must be based on income and family size, affordable, and not be a barrier to a family receiving assistance. The sliding fee scale should be designed in a manner that gradually increases the percent of family income the parent pays as the income increases. Although not a regulatory requirement, federal guidance suggests that the sliding fee scale not exceed 7 percent of the family income.

Current §809.19 requires Boards to establish PSoC amounts based on the federal requirements. The PSoC is established based upon family income and family size.

Board sliding fee scales vary greatly among the workforce areas. For example:

--For a family at the lowest income range (10 percent state median income (SMI)/33 percent federal poverty guidelines (FPG)) with a family size of three and \$600 monthly income, Board sliding scales range from 1.6 percent to 8.2 percent of the family income.

--For a family in the mid-income range (55 percent SMI/150 FPG) with a family size of three and \$3,288 monthly income, Board scales range from 4.3 percent to 9.5 percent.

--For a family at the highest income range (85 percent SMI) with a family size of three and \$5,081 monthly income, Board scales range of 2.3 percent to 9.8 percent.

Board policies also vary greatly on additional amounts that may be added to the PSoC for each additional child in care.

Additionally, TWC's former standard sliding scale requires Boards to have a static PSoC amount within nine established income ranges. If the family income changes, but remains within the income range, then the PSoC will not change. This methodology was established prior to the requirement for the PSoC to remain stable within the 12-month eligibility period and was designed to minimize the impact on the PSoC of relatively small changes in income.

However, the disadvantage of this methodology is that once the family income crosses an income range, the increased PSoC could be greater than the income amount increase, resulting "mini-cliffs" that create relatively substantial increases in the percent of income a family pays if a family experiences small increases in income.

The Commission amends Chapter 809 to create a consistent statewide policy on PSoC assessments that would allow for greater consistency in ensuring that the PSoC amount is affordable and would be aligned more closely with the percentage of the family income. The policy:

- standardizes the PSoC assessment to provide a sliding-fee scale that could start from 2 percent to 3.5 percent of family income and gradually increase as the family income increases, but does not exceed 7 percent of the family income for one child in care; and

- allows for a lower incremental increased percentage of the family income for families and for each additional child in care.

The former PSoC assessments led to variances in the amount charged to parents among workforce areas, including among workforce areas with similar demographics, income levels, and cost of living levels. The new statewide policy for PSoC assessments will standardize the percentage of income a parent pays, limited to 7 percent of the family income, and will create greater consistency in PSoC.

The Commission acknowledges that the new statewide PSoC standard will require substantial changes to the child care automated system. As mentioned previously, TWC is planning to replace the child care information system in TWIST with the new CCCMS. TWC will include the changes to the PSoC in the requirements for the new CCCMS, scheduled to be completed in 2023.

The Commission makes the provisions of the amended rules regarding the statewide PSoC effective on October 1, 2023, to align with the Board Contract Year 2024.

#### Statewide Income and Activity Eligibility Requirements

Chapter 809, Subchapter C (Eligibility for Child Care Services) establishes general statewide eligibility requirements that reflect the eligibility requirements in the CCDF regulations. However, within the general requirements, Boards have some flexibility to place additional requirements for eligibility. For example, the rules require that family income cannot exceed the federal income limits of 85 percent of the SMI. However, the rules also allow Boards to have lower income limits. Currently, five Boards have income limits lower than 85 percent of the SMI. Similarly, TWC rules require that parents must participate in work, job training, or education activities for 25 hours a week (50 hours for a dual-parent family), but Boards are allowed to place higher hourly activity requirements on families. Currently, only one Board has activity requirements greater than the minimum requirements in rule.

The Commission amends Chapter 809 to create a consistent statewide policy to:

- implement a standard income eligibility limit of 85 percent of the SMI; and
- require that parents must participate in work, job training, or education activities for 25 hours a week (50 hours for a dual-parent family).

#### Statewide Policy on Child Care during Education

Boards place varying restrictions on providing child care for parents pursuing certain types of education and degrees, and how Boards determine a parent is making progress in achieving education and job training completions. For example, five Boards specifically allow child care services while a parent is pursuing postgraduate degrees, while five other Boards do not specify if advanced degrees are allowed, and 16 Boards specifically state that child care services while pursuing a postgraduate degree are not allowed.

Additionally, the time limits for receiving child care services while participating in education activities vary greatly by Board. Time limits range from 48 months to a maximum of 96 months for all postsecondary education. Time limits also vary according to the type of education pursued. For example, Boards allow from 60 months to 72 months for a bachelor's degree, and from 24 months to 48 months for a certification program.

The Commission amends Chapter 809 to create a consistent statewide policy regarding child care while the parent is in education activities. The rules establish a cumulative total of 60 months for parents to participate in CCS while enrolled full-time in:

- high school;
- a Certificate of High School Equivalency program; or
- an undergraduate degree program.

The Commission notes that this limit applies to parents enrolled full-time in the education programs and are meeting the participation requirements only through education hours. The Commission also notes that the cumulative 60-month limit does not need to be consecutive months, but it does include cumulative months enrolled in any of the education programs above.

The Commission also notes that the amended rules remove postgraduate degrees from the definition of an educational program, thus, removing the inclusion of postgraduate enrollment in counting education activity hours for child care services eligibility. This creates a consistent policy followed by a majority of Boards. As mentioned previously, 16 Boards specifically state in policy that child care services while pursuing a postgraduate degree are not allowed.

Finally, §809.2(1) currently requires Boards to establish a policy to determine how a parent is making progress toward successful completion of an education program or job training program. Currently, Board policies vary widely regarding attendance requirements, GPA, and consideration for an education or training program's requirements specific requirements.

The Commission amends the definition of attending a job training or educational program to establish a statewide policy that "making progress toward successful completion" of a job training or education program is demonstrated through continued enrollment in the training or educational program. This policy is



intended to streamline and standardize the verification that the parent is making progress toward completion of the program.

#### Statewide Policies on Children with Disabilities

CCDF regulations at 45 CFR §98.20(a)(1)(ii) allows Lead Agencies to serve children with disabilities up to the age of 19 and §809.41(a)(1)(B) gives this flexibility to Boards. Currently, 27 Boards provide child care services for children with disabilities up to age 19.

The Commission amends Chapter 809 to create a consistent statewide policy to have children with disabilities up to age 19 eligible for child care services.

#### Streamline Rules on Board-Required Policies, and Remove Operational Procedures

The Commission amends §809.13 to remove the list in subsection (c) of required Board policies as the required Board policies are described in other Chapter 809 sections, as well as in the Child Care Services Guide. Section 809.13(c) was created to assist Boards in identifying in one place their required policies. However, the section predated the issuance of the Child Care Services Guide, which also provides the same comprehensive list of required Board policies.

The Commission notes that the requirement that Boards have policies formerly listed in §809.13(c) has not changed in other sections of the rules. This change simply removes repeating these requirements in §809.13(c).

#### Allowing Job Search for Initial Eligibility

The Commission proposes new §809.56, Child Care during Initial Job Search. Under federal Child Care Development Block Grant (CCDBG) regulation 45 CFR §98.21(a)(2)(iii), states may initially qualify a family for assistance if the parent is seeking employment or engaging in job search and may end assistance after a minimum of three months if the parent has not found employment.

However, unemployed parents who are looking for work are not initially eligible for CCS under the former §809.41(a)(3)(B). On June 15, 2021, the Commission approved a temporary waiver for §809.41(a)(3)(B) to provide additional flexibility, allowable under federal CCDBG law and regulations, to support parents who do not meet the activity requirements when eligibility is determined. This waiver allows up to three months of child care for parents to search for work. The waiver expires on October 1, 2022.

On June 30, 2021, TWC issued guidance to the Boards in WD Letter 13-21, regarding eligibility for child care during the initial job search period.

The Commission amends §809.2 to include job search in the definition of working and adds new §809.56 in Subchapter C (Eligibility for Child Care Services) for job search child care with provisions consistent with the guidance issued in WD Letter 13-21, specifically:

--A parent, including a parent in a dual-parent family, is eligible for child care services if at initial eligibility determination the family does not meet the minimum participation requirements for At-Risk Child Care. (Note: Parents in the CCS program who are unemployed at the time of eligibility redetermination are provided three months of continued care under §809.51(b) regarding child care during interruptions in work.)

--Boards must allow parents to self-attest that the family meets the requirements for job search child care, and that the family income does not exceed 85 percent of the state median income.

--Child care for job search at initial eligibility is limited to three months (with the clarification in guidance that a Board may extend an initial job search period for a maximum of 30 calendar days to ensure continuity of care in order to verify and determine eligibility requirements for continued care).

--Total activity participation by the end of the three months must be at least 25 hours for a single-parent family or 50 hours per week for a dual-parent family, and must consist of a minimum of 12 hours in employment for a single-parent family and 25 hours in employment for a dual-parent family.

--If the family meets the participation requirements above, within, or by the end of the three months, child care services will continue for a total of 12 months, inclusive of the months in initial job search.

--If the family does not meet minimum activity requirements by the end of the three months, care must be terminated.

--The PSoC is initially assessed at the highest amount based on the family size and number of children in care.

--The initially assessed amount will immediately be reduced to zero, which includes dual-parent families in which one parent is working but the participation requirements are not met.

--If the parent begins to meet participation requirements within or by the end of the job search period, the PSoC must be reinstated at the initially assessed amount or the amount based on the actual family income, whichever is lower.

Proposed §809.56 also requires that eligibility for job search child care be limited to one three-month job search period within a 12-month period.

The Commission notes the intent of requiring the 12/25 minimum number of activity hours in employment is to emphasize employment outcomes during job search, while also allowing families to meet the full 25/50 hourly requirement through a combination of employment, education, and training. This policy strikes a balance between requiring job search individuals to meet the activity through 100 percent employment and allowing the family to meet the full 25/50 requirement through a combination of employment, education, and training hours.

TWC currently has a Board Incentive Award that provides an incentive for Boards to assist parents in child care job search to obtain employment. To emphasize this connection with the workforce delivery network, the Commission is including a requirement that a Board ensures that the parent in child care for job search is registered in the state's labor exchange system and has access to appropriate services available through the one-stop service delivery network.

#### Automated Attendance and Attendance Standards

TWC is conducting a procurement for a new automated attendance system. However, Chapter 809 rules include several requirements that are specific to the previous automated system, particularly regarding the use of attendance cards for point-of-service devices. The type of automated system and the process for recording attendance, including the use of attendance cards, has not been determined.

The Commission is amending the attendance reporting language in §809.78 (regarding parent reporting requirements),

§809.95 (regarding provider reporting requirements), and §809.115 (regarding corrective actions) related to using attendance cards or other language specific to the previous system, which would allow flexibility for future automated attendance systems.

#### Provider Payments

CCDF regulations at 45 CFR §98.45(l) requires Lead Agencies to establish payment practices that ensure timeliness of payment and reflect generally accepted payment practices of child care providers that do receive CCDF. The regulations cite paying based on a child's enrollment rather than attendance and paying prospectively prior to the delivery of services.

Section 809.93(b) requires Boards to reimburse providers based on the child's enrollment rather than attendance; however, former rules do not allow for providers to be paid prospectively. Because payments are based on the enrollment authorization and not attendance, the Commission amends §809.93 to require Boards to pay providers on that enrollment every two weeks prior to the delivery of services, pursuant to 45 CFR §98.45(l).

Currently, 24 Boards reimburse providers either weekly or every two weeks. Additionally, the two-week prospective payment aligns with current Commission policy regarding transfers that includes a waiting period of two weeks before the effective date of a transfer, except in cases in which the provider is subject to a CCL corrective action, when the transfer is authorized by Child Protective Services (CPS) for a child in protective services, or on a case-by-case basis as determined by the Board.

The Commission acknowledges this change will require detailed operational guidance to Boards regarding reconciling payments, payment estimations, and child transfers. Additionally, paying prospectively will also require changes to the child care information systems. In order to work with Boards on operational details of this new policy and to include this change in the new CCCMS, the Commission makes the provisions of the amended rules effective on October 1, 2023, to align with Board Contract Year 2024.

#### Providers Charging Parents the Difference between the Board Rate and the Provider Published Rate

TWC rules at §809.92(c) prohibit providers from charging the difference to parents who are exempt from the PSoC (parents participating in Choices, Supplemental Nutrition Assistance Program Employment and Training, parents of children experiencing homelessness, and parents of children in protective services) and whose PSoC is calculated to be zero. However, §809.92(d) allows Boards to prohibit providers from charging the difference to all parents. Currently eight Boards allow providers to charge the difference to parents not exempt from the PSoC.

CCDF regulations at 45 CFR §98.45(b) requires Lead Agencies to ensure that their payment rates ensure equal access to the full range of providers that are available to parents not receiving CCDF services, and that the rates are adequate without additional amounts above the assessed PSoC for instances in which the provider's published rate exceeds the subsidy amount.

CCDF regulations at 45 CFR §98.45(b)(5) requires a rationale for the policy on whether child care providers may charge additional amounts to families above the PSoC, including:

--a demonstration that the policy promotes affordability and access; and

--an analysis of the interaction between any such additional amounts with the required family copayments, and of the ability of subsidy payment rates to provide access to care without additional fees.

Additionally, 45 CFR §98.45(d)(2) requires Lead Agencies to track the extent to which "CCDF child care providers charge amounts to families more than the required family co-payment....in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such payments."

To align with federal CCDF requirements, the Commission amends §809.92 to require Boards that allow providers to charge parents amounts above the assessed PSoC to:

--require that each month, any provider that charges a family an amount above the PSoC reports the following:

----the specific families that were charged an additional amount above the PSoC;

----the frequency with which each family was charged; and

----the amount of each additional charge;

--provide the rationale for the Board's policy to allow providers to charge families additional amounts above the required copayment, including a demonstration of how the policy promotes affordability and access for families;

--describe the Board's analysis of the interaction between the additional amounts charged to families with the required PSoC and the ability of subsidy payment rates to provide access to care without additional fees; and

According to the most recent Market Rate Survey, 5.2 percent of centers and 6.5 percent of homes charge parents the difference between the reimbursement rate and the provider published rate. Further, on August 31, 2021, the Commission approved substantial rate increases for all providers designed to ensure that the payment rates ensure equal access required by 45 CFR §98.45. This rate action could also reduce instances in which the provider's published rates are higher than Board reimbursement rates.

#### Rule Clarifications and Technical Amendments

The Commission also amends the following sections of Chapter 809 to provide clarifications of the rule provisions and technical changes:

--Throughout Chapter 809 - Change Child Care Licensing (CCL) to Child Care Regulation (CCR).

--§809.1 - Specify which sections of Chapter 809 do not apply to Board child care services funded through non-CCDF sources.

--§809.16 - Clarify that Board quality activities must be in accordance with the CCDF State Plan. Remove language regarding compliance with federal and state regulations as these requirements are reflected in the CCDF State Plan.

--§809.20 - Include enhanced rate for infants and toddlers at a Texas School Ready provider participating in the Texas School Ready infant/toddler program.

--§809.20 - Codify the current practice of Boards establishing a higher enhanced reimbursement rate for nontraditional hours, as defined by the Board.

--§809.44 - Separate exclusions for one-time cash payments from tax credits and refunds from the income calculation.

--§809.48 and §809.50 - Specify that dual-parent activity hours include a combination of work, training, or education.

--§809.78 - Clarify the process regarding the 15- and 30-day thresholds for Boards notifying parents of potential excessive absences.

--§809.93 - Include "blended-day" as an enrollment type.

--§809.93 - Revise outdated language regarding payments for "occasional" part-day/full-day attendance.

--§809.94 - Remove the language prohibiting subsidy eligibility for providers that are on Adverse Action with CCR but are appealing the action as this language is not necessary, due to SB 764 (87th Texas Legislature, Regular Session (2021)), which prohibited these providers from operating.

--§809.131 - Clarify that at minimum, a center director account is required to be created within the Texas Early Childhood Professional Development System's Workforce Registry to meet Texas Rising Star eligibility requirements.

--§809.134 - Revise that Texas Rising Star mentor staff with allowable associate degrees have two years of suitable experience in early childhood education as determined by the Board to allow Boards to determine suitable experience.

#### Chapter 809 Rule Review

Texas Government Code, §2001.039 requires that every four years each state agency review and consider for reoption, revision, or repeal each rule adopted by that agency. TWC conducted a rule review of Chapter 809, Child Care Services, and the amendments described in this document are the result of the rule review.

### 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

TWC proposes the following amendments to Subchapter A:

##### §809.1. Short Title and Purpose

Section 809.1 is amended to clarify the following sections of Chapter 809 do not apply to child care services that use non-Child Care and Development Fund sources allocated to workforce areas:

--Funds used for quality improvement activities described in §809.16;

--Assessing the parent share of cost described in §809.19; and

--Subchapter C, relating to Eligibility for Child Care Services.

##### §809.2. Definitions

Section 809.2(1)(C) is amended to establish a statewide policy that "making progress toward successful completion" of a job training or education program is demonstrated through continued enrollment in the training or educational program. This policy is intended to streamline and standardize the verification that the parent is making progress toward completion of the program, aligning with the policies currently in place at a majority of Boards.

Section 809.2 is amended to add the definition of a Child Care Desert in paragraph (4). A child care desert is defined as an area

described in Texas Labor Code, §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.

Section 809.2(5), as renumbered, is amended to change the name of the child care licensing entity from "Child Care Licensing (CCL)" to current "Child Care Regulation (CCR)." This change is also made throughout the chapter.

Section 809.2(10)(C), as renumbered, is amended to state that an education program at an institution of higher education must lead to an undergraduate degree. The change is made to create a statewide standard that postgraduate degrees are not included in the definition of an educational program for CCS eligibility activity hours. The Commission emphasizes that enrollment in postgraduate degree programs does not in and of itself disqualify a parent from CCS eligibility. The intent is that postgraduate hours are not included in the parent's or family's activity hours for eligibility.

Section 809.2 is amended to remove the definition of a "Pre-Star provider." The Commission is creating a new "Entry Level" designation as part of the definition of a Texas Rising Star provider pursuant to Texas Government Code, §2308.3155 that requires all providers of TWC-funded CCS be included in the Texas Rising Star program.

Section 809.2(25) is amended to remove "voluntary" from the definition of the Texas Rising Star program, as this program is now a statutory requirement for CCS providers.

Section 809.2(26) is amended to include "Entry Level" provider designation in the definition of a Texas Rising Star provider. Additionally, §809.2(26) is amended to clarify that star-level (Two-Star, Three-Star, and Four-Star) Texas Rising Star providers are considered to be "certified" providers throughout the rule language and "Entry Level" is considered to be a "designation."

Section 809.2(27) is amended to include job search in the definition of working.

#### SUBCHAPTER B. GENERAL MANAGEMENT

TWC proposes the following amendments to Subchapter B:

##### §809.13. Board Policies for Child Care Services

Section 809.13 is amended to remove the list of required Board procedures and policies in subsection (c) as the required Board policies are described in other Chapter 809 sections. A comprehensive list of policies required in Chapter 809 as well as procedural requirements for Boards will be included in TWC's Child Care Services Guide and updated with any subsequent rule amendments that require Board policies.

##### §809.14. Coordination of Child Care Services

Section 809.14 is amended to add subsection (c) pursuant to Texas Labor Code, §302.00436, requiring Boards to inform local school districts and open-enrollment charter schools of opportunities to partner with child care providers to expand access to and provide facilities for pre-K programs.

##### §809.15. Promoting Consumer Education

Section 809.15(b)(2) is amended to change "CCL" to "CCR" as described in §809.2.

##### §809.16. Quality Improvement Activities

Section 809.16(a) is amended to clarify that Board quality activities must be in accordance with the CCDF State Plan and to remove language regarding compliance with federal and state regulations as these requirements are reflected in the CCDF State Plan.

#### §809.18. Maintenance of a Waiting List

Section 809.18 is amended to establish two new subsections. New subsection (a) will be effective October 1, 2023, and contains the waiting list maintenance provisions that are currently in rule with the following changes:

--New §809.18(a)(1) clarifies that the waiting list includes children, as well as parents.

--New §809.18(a)(3) clarifies, pursuant to §809.22, that children who are directly referred from a recognized pre-K or Head Start/Early Head Start partnership are exempted from the waiting list.

New §809.18(b) will be effective October 1, 2023, and contains the amended provisions in new §809.18(a) and is further amended to remove the Board-determined process for determining the child is potentially eligible for services and the frequency in which parent information is updated and maintained. New §809.18(b)(4) creates a statewide policy to require that Boards contact the parent every three months and remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

#### §809.19. Assessing the Parent Share of Cost

Section 809.19 is amended to establish two new subsections. New subsection (a) will be effective October 1, 2023, and contains the PSoC provisions that are currently in rule with the following changes:

--New §809.19(a) removes the requirement that child care funded through non-CCDF sources must be assessed a PSoC.

--New §809.19(a)(2) clarifies that the Board policy regarding reimbursing providers if a parent fails to pay the parent share of cost must state whether or not the Board will reimburse the provider if the parent fails to pay. The new §809.19(a)(2) also combines the language in the current rule that if the Board policy does not reimburse the provider, then the Board may have a policy that requires the parent to pay the provider prior to being redetermined for future TWC-funded child care services;

--New §809.19(a)(10) adds blended care referrals as eligible for a PSoC reduction by Board policy.

New subsection (b) will be effective October 1, 2023, and establishes a statewide PSoC policy.

New §809.19(b) states that the PSoC must be assessed to all parents, except those parents exempted from the PSoC, and the amount is established by the Commission and determined on a sliding fee scale based on the family size and gross monthly income and represented by a percentage of the SMI.

The Commission notes that the actual percentage of income to be used will be established, reviewed, and, if necessary, modified by the Commission on an annual basis as the annual SMI amounts are released.

New §809.19(b) requires Boards to assess the PSoC in accordance with the amount established by the Commission.

New §809.19(b) removes the requirement that Board policy include the general criteria for determining affordability of the Board's PSoC, as the PSoC is no longer determined or established by the Board. The amended rules remove the requirement that Boards have a definition of what constitutes frequent terminations and its process for assessing PSoC affordability.

Similarly, because the Board no longer determines the PSoC, new §809.19(b) removes the requirement that Boards with frequent terminations for parent failure to pay the PSoC must reexamine its PSoC and adjust it to ensure the PSoC is not a barrier to assistance.

The Commission notes that TWC will monitor and analyze terminations due to failure to pay the PSoC and evaluate the state PSoC policy to determine if changes are needed to ensure the amounts charged are a barrier to access.

#### §809.20. Maximum Provider Reimbursement Rates

Section 809.20(a)(2) is amended to be effective until October 1, 2023, and contains the reimbursement age groups currently in rule.

Section 809.20(a) is amended to add new paragraph (3) to be effective October 1, 2023, and aligns the age groups for reimbursement with the age groups defined by CCR as required by amended Texas Government Code, §2308.315. The amended language adds new Board rates for Infants ages 12 through 17 months, Toddlers age 2 years, Preschool age 4 years, Preschool age 5 years, and redefines school-age rates to start at six years (from the previous five years of age).

Sections 809.20(b)(1), (c), and (d) are amended to state that the enhanced reimbursement rates are required for certified Texas Rising Star providers (Two-, Three- and Four-Star providers), which aligns with Texas Government Code, §2308.3155(b-1) prohibiting providers at the Entry Level designation from being eligible for the enhanced rate.

Section 809.20(b)(2) is amended to include infants and toddlers for enhanced rates for providers participating in the Texas School Ready program for those age groups.

New §809.20(g) is added to include in rule the current practice that Boards may establish a higher enhanced reimbursement rate for nontraditional hours, as defined by the Board.

#### SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC proposes the following amendments to Subchapter C:

##### §809.41. A Child's General Eligibility for Child Care Services

Section 809.41(a)(1)(B) is amended to establish a statewide policy that a child with disabilities under 19 years of age meets age eligibility for child care services. Currently, 27 of the 28 Boards allow eligibility for children with disabilities up to age 19.

Section 809.41(a)(3)(A)(i) is amended to establish a statewide income limit of 85 percent of the state median income (SMI), which is the federal income limit. Accordingly, §809.41(e), regarding Boards that have initial income limits lower than 85 percent SMI, is removed.

Section 809.41(a)(3)(B) is amended to allow job search as an allowable activity for child care services eligibility.

Section 809.41(b) is amended to establish a statewide policy for parents enrolled in an educational program, which allows them to participate in CCS for a cumulative total of 60 months. The

limit applies only to parents enrolled in a full-time (as defined by the educational institution) education program. Accordingly, with the new 60-month requirement, §809.41(c) requiring four years of child care services for parents enrolled in a program leading to a high-growth, high-demand occupation is removed.

Renumbered §809.41(c) is amended to change "postsecondary" to "undergraduate" degree to align with the new definition of an educational program in §809.2.

Section 809.41(f), specifying that Subchapter C only applies to child care services using funds allocated to the Boards pursuant to §800.58 (Child Care and Development Fund), is removed. This provision is now included in §809.1.

#### §809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42(b) is amended to include the three-month initial job search eligibility period in new §809.56 as an exception to the 12-month eligibility period.

#### §809.44. Calculating Family Income

Section 809.44(b)(5) is amended to include tax-related exemptions from the family income calculation and to clarify that all tax credits, not just the specified Earned Income Tax Credit (EITC) and the Advanced EITC, are exempted from the family income calculation. Section 809.44(b)(5) is also amended to move one-time payments from this paragraph to new §809.44(b)(20) related to one-time payments.

#### §809.48. Transitional Child Care

Section 809.48(a)(3) is amended to clarify that the minimum weekly activity requirement of 50 hours per week for a dual-parent family is a combined total from both parents. The Commission clarifies that there is no minimum activity requirement for each parent.

Section 809.48 is amended to remove subsection (b) allowing Boards to establish a higher income limit for Transitional Child Care. This paragraph is no longer needed with the statewide income eligibility limit of 85 percent SMI established in §809.41.

Relettered §809.48(d) is amended to change postsecondary to undergraduate to reflect the amended definition of an educational program in §809.2.

#### §809.50. At-Risk Child Care

Section 809.50(a)(1) is amended to establish a statewide income limit of 85 percent SMI for At-Risk Child Care.

Section 809.50(a)(2) is amended to clarify that the minimum weekly activity requirement of 50 hours per week for a dual-parent family is a combined total from both parents. The Commission clarifies that there is no minimum activity requirement for each parent.

Section 809.50(c) is amended to change postsecondary to undergraduate to reflect the amended definition of an educational program in §809.2.

Section 809.50 is amended to remove subsection (e) which allows Boards to establish a higher income limit for teen parents and subsection (g) which allows Boards to establish a higher income limit for families with children enrolled in Head Start, Early Head Start, or public pre-K. These provisions are no longer needed with the statewide income eligibility limit of 85 percent SMI established in §809.41.

Subsections are relettered accordingly.

#### §809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training

Section 809.51(a) is amended to include the three-month initial job search eligibility period in new §809.56 as an exception to the 12-month eligibility period.

#### §809.55. Waiting Period for Reapplication

Section 809.55(a) is amended to remove specific paragraph citations in other sections of the rules.

#### §809.56. Child Care during Initial Job Search

New §809.56 sets forth the requirements for child care during a parent's initial job search activities. Section 809.56(a) states that a parent, including a parent in a dual-parent family, is eligible for child care services at initial eligibility if the family does not meet the minimum participation requirements for At-Risk Child Care. Section 809.56(b) allows parents to self-attest that the parent does not meet the At-Risk participation requirements.

New §809.56(c) limits child care for job search to three months. Child care services will continue following this three-month period, if, by the end of the three months, the family meets the following activity requirements:

--25 hours for a single parent, with at least 12 hours in employment; or

--50 hours combined for dual-parent families, with at least 25 combined hours in employment.

If the above participation requirements are met within or by the end of the three-month period, care will continue for 12 months, inclusive of the care provided during the initial job search period.

New §809.56(d) sets forth the requirements for the PSoC during the initial job search period. Boards will initially assess the PSoC at the highest amount based on the family size and number of children in care. However, this assessed amount will immediately be temporarily reduced to zero. This reduction also applies to dual-parent families in which one parent is employed, but the family meets the requirements for job search child care (that is, the family is not meeting the At-Risk participation requirements). If the parent begins to meet the participation requirements described in §809.56(c), the PSoC will be reinstated at the initially assessed amount or the amount based on the actual family income, whichever is lower.

New §809.56(e) limits child care during the initial job search period to one such period within a 12-month period.

New §809.56(f) requires Boards to ensure that the parent in child care job search:

--registers with the state's labor exchange system (currently, WorkInTexas.com); and

--has access the appropriate services available through the one-stop delivery network described in 40 TAC §801.28.

#### SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC proposes the following amendments to Subchapter D:

#### §809.71. Parent Rights

Section 809.71(3) is amended to require that the information about transfer policies include the two-week waiting period before the effective date of a transfer, except in cases in which the provider is placed on corrective action by CCR, when the trans-

fer is authorized by CPS for a child in protective services, or on a case-by-case basis as determined by the Board.

Section 809.71(4), related to information on Board policies regarding providers charging parents additional amounts above the PSoC, is amended to clarify that the information must include providers charging any amounts above the assessed PSoC, not just an amount that makes up the full difference between the PSoC and the provider's published rate.

#### §809.72. Parent Eligibility Documentation Requirements

Section 809.72 is amended to allow a child whose parents are conducting an initial job search under the respective rule provisions for these conditions to receive child care services without the parent first providing the Board's child care contractor with all information necessary to determine initial eligibility.

#### §809.73. Parent Reporting Requirements

Section 809.73(a) is amended to clarify that parents in initial job search are only required to report items that impact a family's eligibility or that enable the Board or contractor to contact the family or pay the provider.

#### §809.75. Child Care during Appeal

Section 809.75 is amended to correct a reference in §809.19 related to nonpayment of the PSoC as it relates to a parent appeal.

#### §809.78. Attendance Standards and Notice and Reporting Requirements

Section 809.78 is amended to remove or clarify requirements for attendance tracking that are specific to the former automated attendance tracking or would be specific to a particular future automated attendance system.

Section 809.78(a)(3) is amended to remove from unexplained absences any denied or rejected attendance recording in which the parent does not contact TWC's Child Care Services unit to report the issue.

Section 809.78(a)(5) is amended to remove language related to using attendance cards and to include language stating that parents shall adhere to TWC procedures for reporting attendance and absences, including the use of the attendance reporting system.

Section 809.78(a) is also amended to remove paragraphs (6) - (10) as these provisions apply specifically to the previous system's use of attendance cards or use of the previous automated attendance system.

Section 809.78(d)(1) clarifies that the written notification of potential termination due to the failure to meet attendance standards should be provided "as soon as practicable" after the child reaches the 15- or 30-day cumulative absence threshold.

### SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC proposes the following amendments to Subchapter E:

#### §809.91. Minimum Requirements for Providers

Section 809.91 is amended to include Texas Rising Star certification or Entry Level designation as a requirement to provide child care services. This section is also amended to remove references to the Pre-Star designation.

#### §809.92. Provider Responsibilities and Reporting Requirements

Section 809.92(c) is amended to clarify that providers must not charge any amounts over the PSoC, not just the full difference between the PSoC and the provider's published rates, to parents who are exempt from the PSoC or have a zero PSoC assessment. This subsection is also amended to add parents in initial job search child care during the initial job search period.

Section 809.92(d) is amended to also state that Boards may have a policy that allows providers to charge amounts above the PSoC to parents not included in the subsection (c) exemptions.

New §809.92(e) requires Boards that allow providers to charge additional amounts pursuant to §809.92(d) to ensure that the provider reports to the Board each month the:

--specific families that were charged an additional amount above the assessed amount;

--frequency with which each family was charged; and

--amount of each additional charge.

New §809.92(f) is added to include the federal reporting requirements regarding policies allowing providers to charge parents above the PSoC amount. The new rule language requires Boards that have a policy allowing providers to charge such amounts to:

--provide the rationale for the Board's policy, including a demonstration of how the policy promotes affordability and access for families; and

--describe the Board's analysis of the interaction between the additional amounts charged to families with the required PSoC and the ability of current reimbursement rates to provide access to care without additional fees.

#### §809.93. Provider Reimbursement

Section 809.93(f) is amended to add in rule the current practice of blended-day enrollment authorizations. The rule language clarifies that the blended-day referrals are for children enrolled in a school program, pre-K, Head Start, or Early Head Start, in which child care is part-time with care provided occasionally on a full-day basis. The Commission clarifies that there is not a requirement in rules that providers accept part-day care as a prerequisite to receive blended-day referrals. The part-day rate, however, is used in the calculation for the blended-day rate.

Accordingly, the amendment removes §809.93(h) prohibiting providers from being paid less with a child enrolled in full-day care who occasionally attends part-day, or more when a part-day child occasionally attends full-day. These occasional days should be reviewed and changed to a blended-day referral if applicable.

New §809.93(j) is added to require Boards to pay providers prospectively every two weeks based on the monthly enrollment authorization. The Commission notes that this provision is effective October 1, 2023.

#### §809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation

Section 809.94 is amended to update the change of the child care licensing entity to Child Care Regulation.

Section 809.94(e), regarding providers appealing an Adverse Action by CCR but remain open under a court order, is removed as providers appealing an Adverse Action are prohibited from continuing operations by SB 764.

#### §809.95. Provider Automated Attendance Agreement

Section 809.95 is amended to remove references specific to the former automated attendance system. The amended language states that owners, directors, assistant directors, or other provider employees must not have access to a parent's information to access TWC's automated attendance system. The language is general and does not specify any specific type of future automated attendance system.

#### §809.96. Contracted Slots Agreements

Section 809.96(e)(1)(A) is amended to reference a child care desert, which is now defined in new §809.2(4). The definition of a child care desert in new §809.2(4) includes the language previously specified in §809.96(e)(1)(A). Section 809.96(e)(2) and (3) are amended to clarify that eligibility for contracted slots include "recognized" pre-K, Early Head Start, and Head Start partnerships, which are defined in §809.22.

Section 809.96(f) is amended to remove the reference to Board policies in §809.13(c) as that subsection is removed.

Section 809.96(i) is amended to change the Board contracted slots reporting requirement from six to 12 months pursuant to amended Texas Labor Code, §302.0461(d).

#### SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

TWC proposes the following amendments to Subchapter F:

##### §809.112. Suspected Fraud

Section 809.112(b)(2) is amended to include reporting requirements during the three-month initial job search period.

##### §809.115. Corrective Adverse Actions

Section 809.115(d) is amended to remove language specific to the former automated attendance system.

#### SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC proposes the following amendments to Subchapter G:

##### §809.130. Short Title and Purpose

Section 809.130(b) is amended to include Entry Level providers in the purpose of Subchapter G.

Section 809.130(d) is amended to add language that the Texas Rising Star guidelines distinguish certified Texas Rising Star providers (Two-, Three-, and Four-Star providers) from designated Entry Level providers.

##### §809.131. Requirements for the Texas Rising Star Program

Section 809.131 is amended to change the section name from "Eligibility for the Texas Rising Star Program" to "Requirements for the Texas Rising Star Program." This change is made to emphasize that Texas Rising Star is a mandatory program for child care services providers that meet the requirements of Subchapter G and the Texas Rising Star guidelines.

New §809.131(a) outlines the requirements for Texas Rising Star certification. The new subsection retains the previous requirements for application to the Texas Rising Star program, namely, that the provider:

--has a permanent (nonexpiring) license or registration from CCR;

--has at least 12 months of licensing history with CCR, and is not on:

----corrective action with a Board;

----a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages); or

----corrective or adverse action with CCR; or

--is regulated by and in good standing with the United States Military.

New §809.131(a) removes the former requirements that the provider must meet the Pre-Star designation and adds that the provider must meet the criteria for star-level (Two-, Three- or Four-Star) certification in the Texas Rising Star guidelines.

New §809.131(a) requires that Texas Rising Star-certified provider's center director is registered in the Texas Early Childhood Professional Development System Workforce Registry (workforce registry). The new rule language removes the former requirement that teaching staff are also registered in the workforce registry.

New §809.131(b) contains the requirements for Entry Level designation.

Regulated child care providers not meeting the Texas Rising Star certification requirements in §809.131 shall be initially designated as Entry Level if the child care provider:

--is not on corrective or adverse action with CCR; and

--does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 12-month period as established in the guidelines.

New §809.131(c) states that providers meeting the Entry Level designation is eligible for mentoring services.

New §809.131(d) states that the Entry Level designation is limited to an initial 24 months, unless approved for a waiver.

New §809.131(e) sets forth the time periods for Entry Level--designated providers to be reviewed for Texas Rising Star certification. The rule language states that Entry Level providers will be reviewed for Texas Rising Star certification after the first 12 months of the 24-month period. If an Entry Level provider is not certified after the first 12 months, the provider may receive up to two six-month extensions and:

--shall continue to receive new family referrals during the first six-month extension; and

--if a provider requires a second six-month extension, shall not receive new family referrals during the second six-month extension.

New §809.131(f) and (g) sets forth the criteria for an Entry Level extension waiver. Section 809.131(f) allows TWC to approve a waiver of the 24-month Entry Level time limit, if the provider is:

--located in a "child care desert" or an "underserved" area described in §809.96(e)(1);

--unable to meet the certification requirements due to a federal- or state-declared emergency/disaster; or

--unable to meet the certification requirements due to conditions that TWC determines are outside of the provider's control.

##### §809.132. Impacts on Texas Rising Star Certification

Because state statute requires providers participating in the CCS program to be certified as Texas Rising Star, a certified program

that drops below a Two-Star level due to licensing deficiencies or non-compliance with Texas Rising Star standards, falls into a unique category of being a certified provider, but with suspended certification and not eligible for enhanced reimbursement or Entry Level designation.

Section 809.132(a) is amended to state that certified Texas Rising Star providers will be placed on a "suspension status" for certain deficiencies, namely, if the provider:

- is placed on corrective action with a Board;
- is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages);
- is placed on corrective or adverse action by CCR;
- had 15 or more total high or medium-high weighted licensing deficiencies during the most recent 12-month licensing history;
- had more than four probationary impacts during its three-year certification period;
- had a consecutive third probationary impact;
- is cited for specified CCR minimum standards regarding weapons and ammunition; or
- is not meeting at least the Two-Star level due to noncompliance with Texas Rising Star guidelines at the most recent assessment of certification.

Section 809.132(b) regarding licensing deficiencies listed in the Texas Rising Star guidelines that result in a "star-level drop" is amended to reflect the change that a Two-Star certified provider will be placed on suspension status for the applicable licensing deficiencies.

Section 809.132(c) and (d) regarding licensing deficiencies listed in the Texas Rising Star guidelines that result in a second probation period are amended to reflect the change that a Two-Star certified provider will be placed on suspension status.

Section 809.132(e) relating to reinstatement at the former star level is amended to clarify that this provision is for certified providers that are not on suspension status. This primarily relates to Three- or Four-Star providers that have a star-level drop to Two- or Three-Star respectively, as these providers are not placed on suspension status.

New §809.132(f) - (i) set forth the conditions for certified providers on suspension status.

Amended §809.132(f) states that providers on suspension status are eligible to request a reassessment after six months following the suspension date, as long as no deficiencies in subsections (b) - (d) are cited during the previous six months. The six months is to allow sufficient time to demonstrate that the provider's licensing history will not preclude the provider from eligibility. This is similar to the former requirement that providers dropping below a Two-Star level must wait six months before reapplying for the Texas Rising Star program. The Commission notes that providers can be assessed for certification at any time after the six months in which they meet eligibility and screening requirements.

New §809.132(g) states that providers on suspension status must achieve at least a Two-Star certification no later than 12 months following the suspension and failure to achieve at least

a Two-Star certification will result in the provider's ineligibility to provide subsidized child care services.

New §809.132(h) states that providers on suspension status are:

- eligible to provide subsidized child care services as long as the provider meets the Entry Level criteria;
- not eligible for the enhanced reimburse rate and will be reimbursed at the Board's Entry Level reimbursement rate; and
- not able to receive referrals from a new family during the last six months of the 12-month period unless the provider is located in a child care desert or serves an underserved population and is approved by TWC to accept new family referrals.

New §809.132(i) states that providers on suspension status and not achieving recertification by the end of the 12-month period are not eligible to provide TWC-funded child care services, are not eligible for Entry Level designation, and must subsequently meet Texas Rising Star certification eligibility and screening requirements to provide CCS.

#### §809.133. Application and Assessments for the Texas Rising Star Certification

Section 809.133 is amended to describe the separate roles of the Boards for mentoring and the new TWC-designated statewide entity for conducting assessments. The following sections are amended to move responsibility from the Board to the statewide entity.

Section 809.133(b) is amended to clarify that TWC's designated assessment entity is responsible for the following application and certification requirements:

- Written acknowledgment of receipt of the application and self-assessment is sent to the provider;
- Within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;
- An assessment is conducted for any provider that meets the eligibility requirements in §809.131 and requests certification to participate in the Texas Rising Star program; and
- Texas Rising Star certification is granted for any provider that is assessed and verified as meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star guidelines.

Section 809.133(c) is amended to clarify that TWC's designated assessment entity is responsible for the following assessment requirements:

- On-site assessment of 100 percent of the provider classrooms at the initial assessment for certification and at each scheduled recertification; and
- Recertification of all certified providers every three years.

Section 809.133(d) is amended to clarify that TWC's designated assessment entity is responsible for the following monitoring requirements:

- At least one unannounced on-site visit; and
- A review of the provider's licensing compliance as described in §809.132.

Sections 809.133(e) and (f) are amended to clarify that TWC's designated assessment entity is responsible for complying with the process and procedures in the Texas Rising Star guidelines for:



--conducting assessment of nationally accredited facilities and facilities operated by the United States Military; and

--conducting assessments of certified Texas Rising Star providers that have a change of ownership, move, or expand locations.

#### §809.134. Minimum Qualifications for Texas Rising Star Staff

Section 809.134 is amended to clarify the minimum qualifications specific to Board mentor staff, qualifications specific to the statewide entity assessor staff, and qualifications applying to both mentors and assessors.

New §809.134(a) states that Boards and the statewide assessment entity are responsible for ensuring that Texas Rising Star staff:

--meet the CCR background check requirement consistent with Chapter 745 (formerly in §809.134(e)); and

--complete the Texas Rising Star standards training, as described in the Texas Rising Star guidelines (formerly in §809.134(g)(1)).

Relettered §809.134(b) is amended to clarify that mentor staff must meet the minimum education, experience, and microcredentialing requirements in relettered §809.134(c) - (f).

Renumbered §809.134(c)(3), relating to the requirements for mentors with associate degrees, is amended to state that the mentor must also have two years of "suitable" experience in early childhood education, as determined by the Board. The former language required that mentors with associate degrees be required to have two years of experience as a director in an early childhood program.

New §809.134(f) requires that all mentors must attain mentor microcredentialing as described in the Texas Rising Star guidelines (formerly in §809.134(g)(3)).

Section 809.134(g) is amended to retain only the requirement that assessors attain and maintain the Texas Rising Star Assessor Certification, as described in the guidelines.

Section 809.134(f), regarding all Texas Rising Star staff to demonstrate early childhood education knowledge and best practices and an understanding of early childhood evaluations, observations, and assessment tools for both teachers and children, is removed, as these practices are demonstrated through the mentor microcredentialing and assessor certifications.

#### §809.135. Texas Rising Star Process for Reconsideration

Section 809.135 is amended to clarify that the statewide assessment entity is responsible for ensuring that there is a process for reconsiderations of a facility assessment.

#### §809.136. Roles and Responsibilities of Texas Rising Star Staff

Section 809.136 is amended to clarify and separate the roles of mentor and assessor staff.

Section 809.136(1) is amended to specify that a mentor is a Board or Board contractor staff member.

Section 809.136(2) is amended to specify that an assessor is a staff member or contractor of the statewide assessment entity.

Section 809.136(3) is amended to clarify that a "dual-role" staff member is an individual who meets the definition of both mentor and assessor staff.

Section 809.136(4) is amended to state that both the Board and the statewide assessment entity are responsible for ensuring that "dual-role" mentoring staff members do not perform the assessment function of the same provider, and that assessment staff members do not perform mentoring for the same provider.

#### 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 has 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 United States 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 comply with statutory changes resulting from the 87th Texas Legislature, Regular Session (2021), and to provide program improvements and operational consistency.

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 United States 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 gov-

ernmental 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 rules will be in effect, they:

- 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 TWC;
- will not require an increase or decrease in fees paid to TWC;
- will create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- 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 the proposed rules place no requirements on small businesses or rural communities. The rules govern child care providers that voluntarily participate in TWC-funded child care services.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Child Care and Early Learning, 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 proposed rules will be to improve program quality, efficiency, and operational consistency.

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. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards and stakeholders. TWC conducted several calls with Boards and stakeholders prior to the development of the policy concept. TWC provided the policy concept regarding these rule amendments to the Boards and stakeholders for consideration and review on December 21, 2021. TWC also conducted a conference call with Board executive directors and Board staff on January 14, 2022, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

#### PART V. PUBLIC COMMENT

Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) and must be received no later than May 31, 2022.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 40 TAC §809.1, §809.2

#### PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

#### §809.1. Short Title and Purpose.

(a) The rules contained in this chapter may be cited as the Child Care Services rules [Rules].

(b) The purpose of the rules contained in this chapter [these rules] is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Texas Workforce Commission (Commission), to include the Child Care and Development Fund (CCDF), which includes:

~~[(1) the Child Care and Development Fund (CCDF), which includes:]~~

~~(1) [(A)] funds allocated to local workforce development areas (workforce areas) as provided in §800.58 of this title;~~

~~(2) [(B)] private donated funds described in §809.17 of this chapter [§809.17(b)(1)];~~

~~(3) [(C)] public transferred funds described in §809.17 of this chapter [§809.17(b)(2)];~~

~~(4) [(D)] public certified expenditures described in §809.17 of this chapter [§809.17(b)(3)]; and~~

~~(5) [(E)] funds used for children receiving protective services described in §809.49 of this chapter.~~

~~[(2) other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title.]~~

(c) The rules contained in this chapter apply to other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title, except for the following:

~~(1) Funds used for quality improvement activities described in §809.16 of this chapter;~~

~~(2) Assessing the parent share of cost described in §809.19 of this chapter; and~~

~~(3) Subchapter C of this chapter (relating to Eligibility for Child Care Services).~~

(d) [(e)] The rules contained in this chapter shall apply to the Commission, Local Workforce Development Boards (Boards), their child care contractors, child care providers, and parents applying for or eligible to receive child care services.

#### §809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as demonstrated through continued enrollment in the program [determined by the Board] upon eligibility redetermination as described in §809.42 [§809.42(b)] of this chapter.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care [subsidies], as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.

(4) Child Care Desert--An area described in Texas Labor Code, §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.

(5) [(4)] Child Care Regulation (CCR) [Licensing (CCL)]--Division in the Texas Health and Human Services Commission responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes. [Previously a division of the Texas Department of Family and Protective Services (DFPS), CCL is now part of the Texas Health and Human Services Commission (HHSC).]

(6) [(5)] Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(7) [(6)] Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(8) [(7)] Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a), Subtitle VII-B, §725.

(9) [(8)] Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing; speaking; or breathing; learning; and working.

(10) [(9)] Educational program--A program that leads to:

- (A) a high school diploma;
- (B) a Certificate of High School Equivalency; or

(C) an undergraduate [postsecondary] degree from an institution of higher education.

(11) [(10)] Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78 [§809.78(a)(3)] of this chapter.

(12) [(11)] Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

- (A) Two individuals, married--including by common-law, and household dependents; or
- (B) A parent and household dependents.

(13) [(12)] Household dependent--An individual living in the household who is:

(A) an adult considered a dependent of the parent for income tax purposes;

(B) a child of a teen parent; or

(C) a child or other minor living in the household who is the responsibility of the parent.

(14) [(13)] Improper payments--Any payment of Child Care Development Fund (CCDF) grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

- (A) to an ineligible recipient;
- (B) for an ineligible service;
- (C) for any duplicate payment; and
- (D) for services not received.

(15) [(14)] Job training program--A program that provides training or instruction leading to:

- (A) basic literacy;
- (B) English proficiency;
- (C) an occupational or professional certification or license; or
- (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(16) [(15)] Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCR [CCL] pursuant to Texas Human Resources Code, §42.052(c).

(17) [(16)] Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(18) [(17)] Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

[(18)] Pre-Star provider--A designation for subsidy providers licensed or registered by CCL, based on meeting the Screening Criteria for Subsidized Child Care, which is further defined in the CCDF State Plan.]

(19) Protective services--Services provided when a child:

(A) [a child] is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without Texas Department of Family and Protective Services (DFPS) [DFPS] Child Protective Services (CPS) intervention;

(B) [a child] is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) [a child] has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(20) Provider--A provider is defined as a:

(A) [a] regulated child care provider [as defined in paragraph (21) of this section];

(B) [a] relative child care provider [as defined in paragraph (22) of this section]; or

(C) [a] listed family home [as defined in paragraph (15) of this section,] subject to the requirements in §809.91(c) [§809.91(b)] of this chapter.

(21) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

(A) licensed by CCR [CCL];

(B) registered with CCR [CCL]; or

(C) operated and monitored by the United States military services.

(22) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's:

(A) grandparent;

(B) great-grandparent;

(C) aunt;

(D) uncle; or

(E) sibling (if the sibling does not reside in the same household as the eligible child).

(23) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.

(24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(25) Texas Rising Star program--A [voluntary,] quality-based rating system of child care providers participating in Commission-subsidized child care.

(26) Texas Rising Star provider--A regulated child care provider [certified as] meeting the Texas Rising Star program standards. Texas Rising Star providers are [certified as a]:

(A) designated as an Entry Level Provider;

(B) [~~(A)~~] certified as a Two-Star [~~2-Star Program~~]  
Provider;

(C) [~~(B)~~] certified as a Three-Star [~~3-Star Program~~]  
Provider; or

(D) [~~(C)~~] certified as a Four-Star [~~4-Star Program~~]  
Provider.

(27) Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; [or]

(B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities; or [-]

(C) engaging in job search at the time of eligibility determination or redetermination as described in §809.56 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.

Filed with the Office of the Secretary of State on April 14, 2022.

TRD-202201418

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 689-9855



## SUBCHAPTER B. GENERAL MANAGEMENT

### 40 TAC §§809.13 - 809.16, 809.18 - 809.20

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

*§809.13. Board Policies for Child Care Services.*

(a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 802 of this title.

(b) A Board shall maintain written copies of the policies that are required by federal and state law, or as required under this chapter [requested by the Commission], and make such policies available to the Commission and the public upon request.

[(c) At a minimum, a Board shall develop policies related to:]

[(1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program, as described in §809.2(1) of this chapter;]

[(2) maintenance of a waiting list, as described in §809.18(b) of this subchapter;]

[(3) assessment of a parent share of cost, as described in §809.19(a)(1) of this subchapter, including:]

[(A) provisions for a parent's failure to pay the parent share of cost, including the reimbursement of providers, as a program violation that is subject to early termination of child care services within a 12-month eligibility period; and]

[(B) criteria for determining the affordability of the parent share of cost, as described in §809.19(d) and (e) of this subchapter;]

[(4) maximum reimbursement rates, as provided in §809.20 of this subchapter, including policies related to reimbursement of providers that offer transportation;]

[(5) family income limits, as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);]

[(6) provision of child care services to a child with disabilities under the age of 19, as described in §809.41(a)(1)(B) of this chapter;]

[(7) minimum activity requirements for parents, as described in §809.48 and §809.50 of this chapter;]

{(8) time limits for the provision of child care while the parent is attending an educational program, as described in §809.41(b) of this chapter;}

{(9) Board priority groups, as described in §809.43(a) of this chapter;}

{(10) transfer of a child from one provider to another, as described in §809.71(3) of this chapter, including a waiting period of two weeks before the effective date of a transfer, except in cases in which the provider is subject to a CCL action, as described in §809.94 of this chapter, or on a case-by-case basis by the Board;}

{(11) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d) of this chapter;}

{(12) procedures for fraud fact-finding as provided in §809.111 of this chapter;}

{(13) policies and procedures to ensure that appropriate corrective actions are taken against a provider or parent for violations of the automated attendance requirements specified in §809.115(d) and (e) of this chapter;}

{(14) policies and procedures for contracted slots agreements as described in §809.96 of this chapter, if the Board opts to enter into such agreements; and}

{(15) supporting direct referrals from recognized pre-K or HS/EHS partnerships, as described in §809.22 of this subchapter.}

#### §809.14. Coordination of Child Care Services.

(a) A Board shall coordinate with federal, state, and local child care and early development programs and representatives of local governments in developing its Board plan and policies for the design and management of the delivery of child care services, and shall maintain written documentation of its coordination efforts.

(b) Pursuant to Texas Education Code, §29.158, and in a manner consistent with federal law and regulations, a Board shall coordinate with school districts, Head Start, and Early Head Start program providers to ensure, to the greatest extent practicable, that full-day, full-year child care is available to meet the needs of low-income parents who are working or attending a job training or educational program.

(c) Pursuant to Texas Labor Code, §302.00436, a Board shall inform the local school districts and open-enrollment charter schools in the Board's workforce area regarding opportunities to partner with child care providers in the Board's area to expand access to and provide facilities for prekindergarten (pre-K) programs.

#### §809.15. Promoting Consumer Education.

(a) A Board shall promote informed child care choices by providing consumer education information to:

- (1) parents who are eligible for child care services;
- (2) parents who are placed on a Board's waiting list;
- (3) parents who are no longer eligible for child care services; and
- (4) applicants who are not eligible for child care services.

(b) The consumer education information, including consumer education information provided through a Board's website, shall contain, at a minimum:

- (1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;

(2) the website and telephone number of CCR [CCL] so parents may obtain health and safety requirements including information on:

(A) the prevention and control of infectious diseases (including immunizations);

(B) building and physical premises safety;

(C) minimum health and safety training appropriate to the provider setting; and

(D) the regulatory compliance history of child care providers;

(3) a description of the full range of eligible child care providers set forth in §809.91 of this chapter; and

(4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:

(A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas Government Code, §2308.315; and

(B) integrated school readiness models, pursuant to Texas Education Code, §29.160;

(5) a list of child care providers that meet quality indicators, pursuant to Texas Government Code, §2308.3171;

(6) information on existing resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:

(A) the Early and Periodic Screening, Diagnosis, and Treatment program under 42 USC 1396 et seq.; and

(B) developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 USC 1419, 1431 et seq.); and

(7) a link to the Agency's designated child care consumer education website.

(c) A Board shall cooperate with HHSC to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

#### §809.16. Quality Improvement Activities.

(a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and specifically §800.58 of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, to the extent they are used for nondirect care quality improvement activities, shall [may] be expended in accordance with [45 CFR Part 98, §98.53, any applicable state laws, and] the CCDF State Plan.

(b) Boards must ensure compliance with 45 CFR Part 98 regarding construction expenditures, as follows:

(1) State and local agencies and nonsectarian agencies or organizations.

(A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.

(B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

(2) Sectarian agencies or organizations.

(A) The prohibitions in paragraph (1) of this subsection apply.

(B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR Part 98.

(c) Expenditures certified by a public entity, as provided in §809.17 [§809.17(b)(3)] of this subchapter, may include expenditures for any quality improvement activity described in 45 CFR Part 98.

§809.18. *Maintenance of a Waiting List.*

(a) The following provisions are effective prior to October 1, 2023:

(1) [(a)] A Board shall ensure that a list of parents and children waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.

(2) [(b)] A Board shall establish a policy for the maintenance of a waiting list that includes, at a minimum:

(A) [(4)] the process for determining that the parent is potentially eligible for child care services before placing the parent on the waiting list; and

(B) [(2)] the frequency in which the parent information is updated and maintained on the waiting list.

(3) [(e)] A Board shall [may] exempt children from the waiting list who are directly referred from a recognized pre-K or Head Start/Early Head Start (HS/EHS) [HS/EHS] partnership as described in §809.22 of this chapter [subchapter] to a child care provider to receive services in the contracted partnership program[, which is] subject to the availability of funding and the availability of subsidized slots at the partnership site.

(b) The following provisions are effective October 1, 2023:

(1) A Board shall ensure that a list of parents and children waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.

(2) A Board shall ensure that the child is potentially eligible for child care services prior to placing the child on the waiting list.

(3) A Board shall exempt children from the waiting list who are directly referred from a recognized pre-K or HS/EHS partnership, as described in §809.22 of this chapter, to a child care provider to receive services in the contracted partnership program subject to the availability of funding and the availability of subsidized slots at the partnership site.

(4) A Board shall contact the parent every three months and shall remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

§809.19. *Assessing the Parent Share of Cost.*

(a) The following provisions are effective prior to October 1, 2023:

(1) [(a)] For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and specifically, §800.58 of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply: [-]

(A) [(4)] A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:

(i) [(A)] being assessed to all parents, except in instances when an exemption under subparagraph (B) of this paragraph [(2) of this subsection] applies;

(ii) [(B)] being an amount determined by a sliding fee scale based on the family's size and gross monthly income, including a possible reexamination of the sliding fee scale if there are frequent terminations for lack of payment pursuant to paragraph (4) of this subsection [(e) of this section], which also may consider the number of children in care;

(iii) [(C)] being an amount that is affordable and does not result in a barrier to families receiving assistance;

(iv) [(D)] being assessed only at the following times:

(I) [(i)] initial eligibility determination;

(II) [(ii)] 12-month eligibility redetermination;

(III) [(iii)] upon the addition of a child in care;

(IV) [(iv)] upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and

(V) [(v)] upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c) of this chapter; and

(v) [(E)] not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination based on the factor in clause (ii) of this subparagraph [(B) of this paragraph], except upon the addition of a child in care as described in clause (iv)(III) of this subparagraph [(D)(iii) of this paragraph].

(B) [(2)] Parents who are one or more of the following are exempt from paying the parent share of cost:

(i) [(A)] Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;

(ii) [(B)] Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;

(iii) [(C)] Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or

(iv) [(D)] Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c) of this chapter, unless DFPS assesses the parent share of cost.

(C) [(3)] Teen parents who are not covered under exemptions listed in subparagraph (B) of this paragraph [(2) of this subsection] shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.

[(b)] [For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.]

(2) [(e)] A Board shall establish a policy stating whether or not the Board will reimburse [regarding reimbursement of] providers when parents fail to pay the parent share of cost. If the Board does not reimburse providers under the adopted policy, the Board may establish a policy requiring the parent pay the provider before the family can be redetermined eligible for future child care services.

(3) [(d)] A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:

(A) [(1)] a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to subparagraph (B) of this paragraph [(2) of this subsection], and a possible temporary reduction pursuant to paragraph (5) of this subsection [(e) of this section] before the Board or its child care contractor may terminate care under this section;

(B) [(2)] general criteria for determining affordability of a Board's parent share of cost, and a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under paragraph (5) of this subsection [(e) of this section];

(C) [(3)] maintenance of a list of all terminations due to failure to pay the parent share of cost[; including family size, income, family circumstances, and the reason for termination], for use when conducting evaluations of affordability, as required under subparagraph (D) of this paragraph [(4) of this subsection]; and

(D) [(4)] the Board's definition of what constitutes frequent terminations and its process for assessing the general affordability of the Board's parent share of cost schedule, pursuant to paragraph (4) of this subsection [(e) of this section].

(4) [(e)] A Board with frequent terminations of care for lack of payment of the parent share of cost must reexamine its sliding fee scale and adjust it to ensure that fees are not a barrier to assistance for families at certain income levels.

[(f)] [A Board that does not have a policy to reimburse providers when parents fail to pay the parent share of cost may establish a policy to require the parent to pay the provider before the family can be redetermined eligible for future child care services.]

(5) [(g)] The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.

(6) [(h)] If the parent is not covered by an exemption as specified in paragraph (1)(B) of this subsection [(a)(2) of this section], then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.

(7) [(i)] If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

(8) [(j)] A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A)(ii) of this subsection [(a)(1)(B) of this section] upon the parent's selection of a Texas Rising Star--certified provider. Such Board policy shall ensure:

(A) [(1)] that the parent continues [continue] to receive the reduction if:

(i) [(A)] the Texas Rising Star provider loses Texas Rising Star certification; or

(ii) [(B)] the parent moves or changes employment within the workforce area and no Texas Rising Star--certified providers are available to meet the needs of the parent's changed circumstances; and

(B) [(2)] [that] the parent no longer receives the reduction if the parent voluntarily transfers the child from a Texas Rising Star--certified provider to a non-Texas Rising Star--certified provider.

(9) [(k)] A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A)(ii) of this subsection [(a)(1)(B) of this section] upon the child's referral for part-time or blended care. Such Board policy shall ensure that:

(A) [(1)] the parent no longer receives the reduction if the referral is changed to full-time care; and

(B) [(2)] a parent who qualifies for a reduction in parent share of cost for both selecting a Texas Rising Star--certified provider (as defined in paragraph (8) of this subsection [(j) of this section]) and a child's part-time or blended care referral will receive the greater of the two discounts.

(b) The following provisions are effective on October 1, 2023:

(1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and specifically, §800.58 of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply:

(A) The parent share of cost shall be:

(i) assessed to all parents, except in instances when an exemption under subparagraph (C) of this paragraph applies; and

(ii) established by the Commission and determined by a sliding fee scale based on the family's size and gross monthly income determined in §809.44 of this chapter and as represented by a percentage of the state median income (SMI) up to 85 percent SMI.

(B) A Board shall assess the parent share of cost in accordance with subparagraph (A)(ii) of this paragraph and in a manner that results in the parent share of cost:

(i) being assessed only at the following times:

(I) initial eligibility determination;

(II) 12-month eligibility redetermination;

(III) upon the addition of a child in care;

(IV) upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and

(V) upon resumption of work, job training, or education activities following temporary changes described in §809.51(a) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c) of this chapter; and

(ii) not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination, except upon the addition of a child in care as described in subclause (i)(III) of this subparagraph.

(C) Parents who are one or more of the following are exempt from paying the parent share of cost:

(i) Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;

(ii) Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;

(iii) Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or

(iv) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c) of this chapter, unless DFPS assesses the parent share of cost.

(D) Teen parents who are not covered under exemptions listed in subparagraph (C) of this paragraph shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.

(2) A Board shall establish a policy stating whether or not the Board will reimburse providers when parents fail to pay the parent share of cost. If the Board does not reimburse providers under the adopted policy, the Board may establish a policy requiring the parent pay the provider before the family can be redetermined eligible for future child care services.

(3) A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:

(A) a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to subparagraph (B) of this paragraph, and a possible temporary reduction pursuant to paragraph (4) of this subsection before the Board or its child care contractor may terminate care under this section;

(B) a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under paragraph (4) of this subsection; and

(C) maintenance of a list of all terminations due to failure to pay the parent share of cost.

(4) The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.

(5) If the parent is not covered by an exemption as specified in paragraph (1)(C) of this subsection, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.

(6) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

(7) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A) of this subsection upon the parent's selection of a Texas Rising Star--certified provider. Such Board policy shall ensure:

(A) that the parent continues to receive the reduction if:

(i) the Texas Rising Star provider loses Texas Rising Star certification; or

(ii) the parent moves or changes employment within the workforce area and no Texas Rising Star--certified providers are available to meet the needs of the parent's changed circumstances; and

(B) the parent no longer receives the reduction if the parent voluntarily transfers the child from a Texas Rising Star--certified provider to a non-Texas Rising Star--certified provider.

(8) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A) of this subsection upon the child's referral for part-time or blended care. Such Board policy shall ensure that:

(A) the parent no longer receives the reduction if the referral is changed to full-time care; and

(B) a parent who qualifies for a reduction in parent share of cost for both selecting a Texas Rising Star--certified provider (as defined in paragraph (7) of this subsection) and a child's part-time or blended care referral will receive the greater of the two discounts.

§809.20. Maximum Provider Reimbursement Rates.

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies at or above a level established by the Commission to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(f) of this chapter, for the following:

(1) Provider types:

(A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by CCR [ECL];

(B) Licensed child care homes as defined by CCR [ECL];

(C) Registered child care homes as defined by CCR [ECL]; and

(D) Relative child care providers as defined in §809.2 of this chapter.

(2) Age groups in each provider type effective prior to October 1, 2023:

(A) Infants age 0 to 17 months;

(B) Toddlers age 18 to 35 months;

(C) Preschool age children from 36 to 71 months; and

(D) School-age children 72 months and older.

(3) Age groups in each provider type effective October 1, 2023:

(A) Infants ages 0 through 11 months;

(B) Infants ages 12 through 17 months;

(C) Toddlers ages 18 through 23 months;

(D) Toddlers age 2 years;

(E) Preschool age 3 years;

(F) Preschool age 4 years;

(G) Preschool age 5 years; and

(H) School-age 6 years and older.

(b) A Board shall establish enhanced reimbursement rates:



(1) for all age groups at certified Texas Rising Star [TRS] provider facilities; and

(2) only for infant, toddler, and preschool-age children at child care providers that participate in integrated school readiness models for those age groups pursuant to Texas Education Code, §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:

(1) 5 percent greater for a:

(A) certified Two-Star [2-Star Program] Provider; or

(B) child care provider meeting the requirements of subsection (b)(2) of this section;

(2) 7 percent greater for a certified Three-Star [3-Star Program] Provider; and

(3) 9 percent greater for a certified Four-Star [4-Star Program] Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for certified Texas Rising Star [TRS] providers, as long as there is a minimum 2 percentage point difference between each star level.

(e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

(f) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

(g) A Board may establish a higher enhanced reimbursement rate for nontraditional hours, as defined by the Board.

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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Texas Workforce Commission

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For further information, please call: (512) 689-9855



## SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §§809.41, 809.42, 809.44, 809.48, 809.50, 809.51, 809.55, 809.56

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.41. *A Child's General Eligibility for Child Care Services.*

(a) Except for a child receiving or needing protective services as described in §809.49 of this chapter, for a child to be eligible to receive child care services, at the time of eligibility determination or redetermination, a Board shall ensure that the child:

(1) meets one of the following age requirements:

(A) be under 13 years of age; or

(B) [at the option of the Board,] be a child with disabilities under 19 years of age;

(2) is a United States [U.S.] citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and

(3) resides with:

(A) a family within the Board's workforce area:

(i) whose income does not exceed [the income limit established by the Board, which income limit must not exceed] 85 percent of the state median income (SMI) for a family of the same size; and

(ii) whose assets do not exceed \$1,000,000 as certified by a family member; or

(iii) that meets the definition of experiencing homelessness as defined in §809.2 of this chapter.

(B) parents who require child care in order to work, including job search, or attend a job training or educational program; or

(C) a person standing in loco parentis for the child while the child's parent is on military deployment and the deployed military parent's income does not exceed the limits set forth in subparagraph (A) of this paragraph.

(b) A [Notwithstanding the requirements set forth in subsection (e) of this section, a] Board shall ensure that [establish policies, including time limits, for the provision of] child care services while the parent is enrolled full-time in [attending] an educational program is provided for, but does not exceed, a cumulative total of 60 months.

[(e) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years; if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.]

(c) [(d)] A Board may establish a policy to allow parents attending a program that leads to an undergraduate [a postsecondary] degree from an institution of higher education to be exempt from residing with the child as defined in §809.2 of this chapter.

[(e) Boards that establish initial family income eligibility at a level less than 85 percent of SMI must ensure that the family remains income-eligible for care after passing the Board's initial income eligibility limit.]

[(f) Unless otherwise specified, this subchapter applies only to child care services using funds allocated pursuant to §800.58 of this

title, including local public transferred funds and local private donated funds described in §809.17.]

§809.42. *Eligibility Verification, Determination, and Redetermination.*

(a) A Board shall ensure that its child care contractor verifies all eligibility requirements for child care services prior to authorizing child care.

(b) A Board shall ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination, except for Child Care during Job Search as described in §809.56 of this chapter.

§809.44. *Calculating Family Income.*

(a) For the purposes of determining family income and assessing the parent share of cost, Boards shall ensure that family income is calculated in accordance with Commission guidelines that:

(1) take into account irregular fluctuations in earnings; and

(2) ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI do not affect eligibility or parent share of cost.

(b) In accordance with Commission income calculation guidelines, Boards shall ensure that the following income sources are excluded from the family income:

(1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;

(2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;

(3) Needs-based educational scholarships, grants, and loans; including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;

(4) Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;

(5) Tax refunds and tax credits; [Onetime cash payments, including tax refunds, Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum inheritances;]

(6) VISTA and AmeriCorps living allowances and stipends;

(7) Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;

(8) Foster care payments and adoption assistance;

(9) Special military pay or allowances, including subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;

(10) Income from a child in the household between 14 and 19 years of age who is attending school;

(11) Early withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS);

(12) Unemployment compensation;

(13) Child support payments;

(14) Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income

(SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;

(15) Onetime income received in lieu of TANF cash assistance;

(16) Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death, vocational rehabilitation, and education assistance;

(17) Regular payments from Social Security, such as Old-Age, and Survivors Insurance Trust Fund;

(18) Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchases of a new home (consistent with IRS guidance);

(19) Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile; ~~and~~

(20) One-time cash payments, including insurance payments, gifts, and lump sum inheritances; and

(21) [(20)] Any income sources specifically excluded by federal law or regulation.

(c) Income that is not listed in subsection (b) of this section as excluded from income is included as income.

§809.48. *Transitional Child Care.*

(a) A parent is eligible for Transitional child care services if the parent:

(1) has been denied TANF and was employed at the time of TANF denial; or

(2) has been denied TANF within 30 days because of expiration of TANF time limits; and

(3) requires child care to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or a total combined 50 hours per week for a dual parent [two-parent family, or a higher number of hours per week as established by a Board].

~~[(b) Boards may establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for At-Risk child care, pursuant to §809.50, provided that the higher income limit does not exceed 85 percent of the state median income for a family of the same size.]~~

~~(b) [(e)] For former TANF recipients who are employed when TANF is denied, Transitional child care shall be available for:~~

~~(1) a period of up to 12 months from the effective date of the TANF denial; or~~

~~(2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code, §31.012(c) and voluntarily participates in the Choices program.~~

~~(c) [(4)] A Board may allow a reduction to the requirement in subsection (a)(3) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in work, education, or job training activities for the required hours per week.~~

~~(d) [(e)] For purposes of meeting the education requirements stipulated in subsection (a)(3) of this section, the following shall apply:~~

(1) each credit hour of undergraduate [~~postsecondary~~] education counts as three hours of education activity per week; and

(2) each credit hour of a condensed undergraduate [~~postsecondary~~] education course counts as six education activity hours per week.

*§809.50. At-Risk Child Care.*

(a) A parent is eligible for child care services under this section if at initial eligibility determination and at eligibility redetermination as described in §809.42 of this chapter:

(1) the family income does not exceed the income limit [~~established by the Board~~] pursuant to §809.41 of this chapter [~~§809.41(a)(3)(A)~~]; and

(2) child care is required for the parent to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or a total combined 50 hours per week for a dual parent [~~two-parent~~] family[, or a higher number of hours per week as established by the Board].

(b) A Board may allow a reduction to the work, education, or job training activity requirements in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in these activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:

(1) each credit hour of undergraduate [~~postsecondary~~] education counts as three hours of education activity per week;

(2) each credit hour of a condensed undergraduate [~~postsecondary~~] education course counts as six education activity hours per week; and

(3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.

(d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.

~~[(e) Boards may establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(3)(A) provided that the higher income limit does not exceed 85 percent of the state median income for a family of the same size.]~~

~~(c) [(f)] A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter [§809.2(9)].~~

~~[(g) Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85 percent of the state median income for a family of the same size.]~~

*§809.51. Child Care during Interruptions in Work, Education, or Job Training.*

(a) Except for a child experiencing homelessness, as described in §809.52 of this chapter, and for child care during job search, as described in §809.56 of this chapter, if the child met all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period described in §809.42 of this chapter, regardless of any:

(1) change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:

(A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;

(D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;

(E) other cessation of work or attendance in a training or education program that does not exceed three months;

(F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and

(G) change in residency within the state.

(b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

(c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b) of this section, then the Board shall ensure that:

(1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;

(2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19 of this chapter; and

(3) the Board's child care contractor verifies only:

(A) that the family income does not exceed 85 percent of SMI; and

(B) the resumption of work or attendance at a job training or education program.

(d) The Board may suspend child care services during interruptions in the parent's work, job training, or education status only at the concurrence of the parent.

*§809.55. Waiting Period for Reapplication.*

(a) A parent is ineligible to reapply for child care services or to be placed on the waiting list for services for 60 calendar days if the parent's eligibility or the child's enrollment is terminated due to:

(1) excessive unexplained absences under §809.78 of this chapter [~~§809.78(a)~~]; or

(2) nonpayment of parent share of cost pursuant to a Board's established policy under §809.19 of this chapter [§809.19(d)].

(b) To ensure full alignment between Child Care Services rules and the Choices program requirements, the provisions of subsection (a) of this section will not apply to individuals who, during the 60-calendar day waiting period:

(1) become Choices participants who require child care to participate in Choices; or

(2) are on Choices sanction status and require child care to demonstrate participation in Choices.

§809.56. Child Care during Initial Job Search.

(a) A parent, including a parent in a dual-parent family, is eligible for child care services under this section if at initial eligibility determination the family does not meet the minimum participation requirements for At-Risk Child Care as described in §809.50 of this chapter.

(b) A Board shall allow parents to self-attest that the:

(1) family meets the requirements of subsection (a) of this section; and

(2) family income does not exceed 85 percent of the state median income.

(c) Child care under this section is limited to an initial three-month job search period. If total activity participation of at least 25 hours for a single-parent family or a total combined 50 hours per week for dual-parent families, which must include at minimum of 12 hours in employment for a single-parent family and a total combined 25 hours in employment for a dual-parent family, are met within the initial three months, eligibility will continue for a total of 12 months, inclusive of the care provided during the initial job search period. If the family does not meet minimum activity requirements under this subsection within three months, care must be terminated.

(d) For child care during the initial three-month job search period, the follow applies regarding the parent share of cost:

(1) A Board shall initially assess the parent share of cost at the highest amount based on the family size and number of children in care.

(2) The initially assessed amount will immediately be temporarily reduced to zero. This provision also applies to dual-parent families in which one parent is employed but the family meets the requirements in subsection (a) of this section for child care during initial job search.

(3) If the parent begins to meet participation requirements of subsection (c) of this section within or by the end of the three-month job search period, the parent share of cost shall be reinstated at the initially assessed amount or the amount based on the actual family income, whichever is lower.

(e) Eligibility for child care under this section is limited to one initial three-month job search period per family within a 12-month period.

(f) A Board shall ensure that the parent in child care for job search is registered with the state's labor exchange system and has access to appropriate services available through the one-stop delivery network described in §801.28 of this title.

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

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## SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

### 40 TAC §§809.71 - 809.73, 809.75, 809.78

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

#### *§809.71. Parent Rights.*

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

(1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15 of this chapter;

(2) visit available child care providers before making their choice of a child care option;

(3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another, which shall include a waiting period of two weeks before the effective date of a transfer, except in cases in which the provider is subject to a CCR action, as described in §809.94 of this chapter; when the transfer is authorized by CPS for a child in protective services; or on a case-by-case basis determined by the Board;

(4) be informed of the Commission rules and Board policies related to providers charging parents amounts above the assessed parent share of cost [~~the difference between the Board's reimbursement and the provider's published rate~~] as described in §809.92 of this chapter [§809.92(e) - (d)];

(5) be represented when applying for child care services;

(6) be notified of their eligibility to receive child care services within 20 calendar days from the day the Board's child care contractor receives all necessary documentation required to initially determine eligibility for child care;

(7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;

(9) receive written notification at least 15 calendar days before termination of child care services;

(10) reject an offer of child care services or voluntarily withdraw their child from child care, unless the child is in protective services;

(11) be informed of the possible consequences of rejecting or ending the child care that is offered;

(12) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73 of this chapter;

(13) be informed of the parent appeal rights described in §809.74 of this chapter;

(14) be informed of required background and criminal history checks for relative child care providers through the listing process with CCR [CCL] as described in §809.91 of this chapter [§809.91(e)] before the parent or guardian selects the relative child care provider;

(15) receive written notification pursuant to §809.78 of this chapter [§809.78(d)] of the possible termination of child care services for excessive absences, as described in §809.78 of this chapter [§809.78(a)(1)]; and

(16) receive written notification of possible termination of child care services for failure to pay the parent share of cost, pursuant to §809.19 of this chapter [§809.19(d)].

*§809.72. Parent Eligibility Documentation Requirements.*

(a) ~~Parents shall provide the Board's child care contractor with all information necessary to determine initial eligibility according to the Board's administrative policies and procedures [Except for a child experiencing homelessness pursuant to §809.52 at initial eligibility.] before a child can be initially determined or redetermined eligible for child care services and care authorized, unless the child is experiencing homelessness pursuant to §809.52 of this chapter or receiving child care during initial job search pursuant to §809.56 of this chapter. [parents shall provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures.]~~

(b) A parent's failure to submit eligibility documentation shall result in initial denial of child care services or termination of services at the 12-month eligibility redetermination period.

*§809.73. Parent Reporting Requirements.*

(a) Boards shall ensure that during the 12-month eligibility period described in §809.41 of this chapter, or during the three-month initial job search period and the subsequent eligibility period described in §809.56 of this chapter, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

(b) Pursuant to subsection (a) of this section, parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:

(1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

(2) Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.51 of this chapter; and

(3) Any change in family residence, primary phone number, or e-mail (if available).

(c) Failure to report changes described in subsection (a) of this section may result in fact-finding for suspected fraud as described in Subchapter F of this chapter.

(d) A Board shall allow parents to report, and the child care contractor shall take appropriate action, regarding changes in:

(1) income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19 of this chapter; and

(2) work, job training, or education program participation that may result in an increase in the level of child care services.

*§809.75. Child Care during Appeal.*

(a) For a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent requests a hearing.

(b) A Board shall ensure that child care does not continue during the appeal process if the child's enrollment is terminated due to excessive unexplained absences, pursuant to §809.78(a) of this chapter, or nonpayment of parent share of cost, pursuant to §809.19 of this chapter [§809.19(d)].

(c) The cost of providing services during the appeal process is subject to recovery from the parent by the Board[5] if the appeal decision is rendered against the parent.

*§809.78. Attendance Standards and Notice and Reporting Requirements.*

(a) A Board shall ensure that parents are notified of the following:

(1) Parents shall ensure that the eligible child attends on a regular basis consistent with the child's authorization for enrollment and attendance standards described in paragraph (2) of this subsection. Failure to meet attendance standards described in paragraph (2) of this subsection may result in termination for the child due to excessive unexplained absences pursuant to subsection (d) of this section.

(2) Meeting attendance standards for child care services consists of no more than 40 total unexplained absences in a 12-month eligibility period.

(3) Unexplained absences may include:

(A) Any absence that is not due to a child's documented chronic illness or disability, or to a court-ordered custody or visitation agreement; or

(B) Any missed attendance recording that cannot be explained, except if the attendance reporting system is not available through no fault of the parent or provider. [; or]

~~[(C) Any denied or rejected attendance recording in which the parent does not contact the Agency's Child Care Services unit to report the issue.]~~

(4) Notwithstanding paragraph (2) of this subsection, child care providers may end a child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance.

(5) Parents shall report attendance and absences and adhere to Agency procedures for reporting attendance and absences, including the use of the Agency's attendance reporting system [use the attendance card to report daily attendance and absences].

~~[(6) Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.]~~

~~[(7) Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.]~~

~~[(8) Parents shall:]~~

[(A) ensure that the attendance card is not misused by secondary cardholders;]

[(B) inform secondary cardholders of the responsibilities for using the attendance card;]

[(C) ensure that secondary cardholders comply with these responsibilities; and]

[(D) ensure the protection of attendance cards issued to them or secondary cardholders.]

[(9) The parent or secondary cardholders giving the attendance card or the personal identification number (PIN) to another person, including the child care provider, is grounds for a potential fraud determination pursuant to Subchapter F of this chapter.]

[(10) Parents shall report to the child care contractor instances in which a parent's attempt to record attendance in the child care automated attendance system is denied or rejected and cannot be corrected at the provider site. Failure to report such instances may result in an unexplained absence counted toward the attendance standards described in paragraphs (2) and (3) of this subsection.]

(b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of the attendance standards and reporting requirements at each of the following stages:

(1) initial eligibility determination; and

(2) each eligibility redetermination, as required in §809.42 of this chapter [§809.42(b)].

(c) Boards shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not counted in the number of unexplained absences in subsection (a)(2) and (3) of this section.

(d) Boards shall ensure that before terminating care pursuant to subsection (a)(1) of this section [§809.78(a)(1)], the child care contractor:

(1) provides written notice to the parent and the child care provider at reasonable times through established communication channels of the child's absences and the potential termination of services, at a minimum as soon as practicable after [when a] child reaches 15, and 30 general absences cumulatively within a 12-month eligibility period; and

(2) documents that multiple attempts were made, as described in paragraph (1) of this subsection, to determine why the child is absent and to explain the importance of regular attendance.

(e) Where a child's enrollment has been ended by a provider in subsection (a)(4) of this section, Boards shall work with the parent to place the otherwise eligible child with another eligible provider.

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## SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

### 40 TAC §§809.91 - 809.96

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

#### §809.91. Minimum Requirements for Providers.

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2 of this chapter meeting the Texas Rising Star requirements as a certified provider, or designated as an Entry Level provider for the prescribed time periods as described in §809.131 of this chapter, subject to the requirements in subsection (g) of this section;

(2) relative child care providers, as described in §809.2 of this chapter, subject to the requirements in subsection (e) of this section; or

(3) at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:

(A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state.

(B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children.

(C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.

(b) A Board shall not prohibit a relative child care provider that is listed with CCR [ECL] and meets the minimum requirements of this section from being an eligible relative child care provider.

(c) Except as provided by the criteria for Texas Rising Star Provider certification or designation, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

(1) exceed Entry Level [Pre-Star] designation requirements or the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or

(2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

(e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

(1) Relative child care providers shall list with CCR [ECL]; however, pursuant to 45 CFR §98.41(e), relative child care

providers listed with CCR [CCL] shall be exempt from the health and safety requirements of 45 CFR §98.41(a).

(2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:

(A) A child with disabilities as defined in §809.2 of this chapter, and his or her siblings;

(B) A child under 18 months of age and his or her siblings;

(C) A child of a teen parent; and

(D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.

(3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.

(f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:

(1) Except for foster parents authorized by DFPS pursuant to §809.49 of this chapter, licensed child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or

(2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

~~[(g) Regulated child care providers, except those operated and monitored by the US military, must meet Pre-Star provider designation unless exempted under requirements of subsection (h)(3) of this section.]~~

~~[(h) Pre-Star provider designations and exemptions are defined in the Commission-approved CCDF State Plan and include:]~~

~~[(1) minimum Pre-Star criteria required for each provider type;]~~

~~[(2) a progressive statewide roll out plan to require Pre-Star designation for receipt of subsidies; and]~~

~~[(3) limited provider exemption criteria to ensure parent choice is not negatively impacted by the Pre-Star requirements.]~~

#### §809.92. *Provider Responsibilities and Reporting Requirements.*

(a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.

(b) Providers shall:

(1) be responsible for collecting the parent share of cost as assessed under §809.19 of this chapter before child care services are delivered;

(2) be responsible for collecting other child care funds received by the parent as described in §809.21 of this chapter [§809.21(a)(2)];

(3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and

(4) follow attendance reporting and tracking procedures required by the Commission under §809.95 of this chapter, the Board, or, if applicable, the Board's child care contractor.

(c) Providers shall not charge more than [the difference between the provider's published rate and the amount of] the Board's reimbursement rate as determined under §809.21 of this chapter to parents:

(1) who are exempt from the parent share of cost assessment under §809.19 of this chapter; [~~§809.19(a)(2); or~~]

(2) whose parent share of cost is calculated to be zero pursuant to §809.19 of this chapter; or [~~§809.19(f)~~].

(3) parents in Child Care during Initial Job Search under §809.56 of this chapter during the initial three-month period.

(d) A Board may develop a policy that allows [prohibits] providers to charge parents more than the assessed parent share of cost in instances where [from charging the difference between] the provider's published rate exceeds [and the amount of] the Board's reimbursement rate (including the assessed parent share of cost) to all parents not included in subsection (c) of this section [eligible for child care services].

(e) For Boards that allow providers to charge additional amounts pursuant to subsection (d) of this section, the Board must ensure the provider reports to the Board each month:

(1) the specific families that were charged an additional amount above the assessed amount;

(2) the frequency with which each family was charged; and

(3) the amount of each additional charge.

(f) Boards that develop a policy under subsection (d) of this section must:

(1) provide the rationale for the Board's policy to allow providers to charge families additional amounts above the required co-payment, including a demonstration of how the policy promotes affordability and access for families; and

(2) describe the Board's analysis of the interaction between the additional amounts charged to families with the required parent share of cost and the ability of current reimbursement rates to provide access to care without additional fees.

(g) ~~[(e)]~~ Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.

(h) ~~[(f)]~~ Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

#### §809.93. *Provider Reimbursement.*

(a) A Board shall ensure that reimbursement for child care is paid only to the provider.

(b) A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent, as described in §809.51(d) of this chapter.

(c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) A relative child care provider shall not be reimbursed for more children than permitted by the CCR [CCL] minimum regulatory standards for Registered Child Care Homes. A Board may permit more

children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; ~~and~~

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period; ~~and~~ [-]

(3) A blended-day unit of service is for a child enrolled in a school program, pre-K, HS, or EHS in which child care is part-day with care provided occasionally on a full-day basis.

(g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open without a valid contracted slots agreement, as described in §809.96 of this chapter ~~[subchapter]~~.

~~[(h) A Board or the Board's child care contractor shall not pay providers:]~~

~~[(1) less, when a child enrolled full time occasionally attends for a part day; or]~~

~~[(2) more, when a child enrolled part time occasionally attends for a full day.]~~

(h) ~~[(h)]~~ The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

(i) ~~[(j)]~~ A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining the enrollment authorized ~~[whether to authorize reimbursement for full-day or part-day care]~~ under subsection (f) of this section.

(j) Effective October 1, 2023, a Board shall pay providers prospectively every two weeks based on the enrollment authorization described in subsection (b) of this section.

*§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation [the Texas Department of Family and Protective Services].*

(a) For a provider placed on probation corrective action (probationary status) by CCR [CCL], Boards shall ensure that:

(1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of CCR's [CCL's] decision to place the provider on probationary status; and

(2) no new referrals are made to the provider while on probationary status.

(b) A parent receiving notification of a provider's probationary status with CCR [CCL] pursuant to subsection (a) of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71 of this chapter ~~[[§809.71(3)]]~~ if the parent requests the transfer within 14 calendar days of receiving such notification.

(c) For a provider placed on probationary status by CCR [CCL], Boards shall ensure that the provider is not reimbursed at the Boards' enhanced reimbursement rates described in §809.20 while on probationary status.

(d) For a provider against whom CCR [CCL] is taking adverse action, Boards shall ensure that:

(1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that CCR [CCL] intends to take adverse action against the provider;

(2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that CCR [CCL] intends to take adverse action against the provider; and

(3) no new referrals for Commission-funded child care are made to the provider while CCR [CCL] is taking adverse action.

~~[(e) For adverse actions in which CCL has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns CCL's determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (d) of this section.]~~

*§809.95. Provider Automated Attendance Agreement.*

Boards shall notify providers of the following:

(1) The owner, director, assistant director, or other employees ~~[Employees]~~ of child care providers shall not:

(A) possess, have on the premises, or otherwise have access to a parent's information to access the Agency's attendance system; ~~or [the attendance card of a parent or secondary cardholder;]~~

~~[(B) accept or use the attendance card or PIN of a parent or secondary cardholder; or]~~

(B) ~~[(C)]~~ perform the attendance or absence reporting function on behalf of the parent;

~~[(2) The owner, director, or assistant director of a child care provider shall not be designated as the secondary cardholder by a parent with a child enrolled with the provider;]~~

(2) ~~[(3)]~~ Providers shall report misuse of the Agency's automated attendance system ~~[attendance cards and PINs]~~ to the Board or the Board's child care contractor; ~~[and]~~

(3) ~~[(4)]~~ Providers shall report to the child care contractor authorized days that do not match the referral in the Agency's automated attendance system within five days of receiving the authorization. Failure to report the discrepancy may result in withholding payment to the provider; ~~and~~ [-]

(4) ~~[(5)]~~ Misuse of attendance reporting and violation of the requirements in this section are grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

*§809.96. Contracted Slots Agreements.*

(a) In this section, the term "contracted slots agreement" is defined as a Board entering into a contract with a child care provider to reserve a specific number of places, or slots, for children participating in the child care subsidy program. This contract shall:

(1) define the number of slots to be reserved by age group (infant, toddler, preschool, or school-age); and



(2) meet the eligibility requirements as described in subsection (e) of this section.

(b) Boards may enter into a contracted slots agreement with providers that agree to provide subsidized child care services to eligible children residing in the Board's workforce area.

(c) A Board that enters into a contracted slots agreement shall include this strategy in the Board Plan, as described in §809.12 of this chapter.

(d) Each contract between a Board and a provider must identify the number of places (slots) to be reserved for children participating in the child care subsidy program.

(e) To be eligible for a contract, a child care provider must be a Texas Rising Star Three-Star or Four-Star [3-star or 4-star] provider and meet one of the following priorities:

(1) Be located in:

(A) a child care desert; or [where the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission; or]

(B) [in] an underserved area that has been identified by a Board as having an inadequate supply of child care in accordance with the parameters described in the CCDF State Plan; [-]

(2) Have a recognized partnership with local school districts to provide pre-K services;

(3) Have a recognized partnership with EHS or HS;

(4) Increase the number of places reserved for infants and toddlers by high-quality child care providers; or

(5) Satisfy a priority identified in the Board's plan, as described in §809.12 of this chapter.

(f) A Board that enters into a contracted slots agreement may continue payment for reserved slots during times of transition between the time that one child leaves the program and another child is placed in the slot. The period of continued payment shall adhere to the Board's policy for contracted slots agreements[; as described in §809.13(e)(14) of this chapter;] and may not exceed one month following the month of the vacancy.

(g) Except for children directly referred from recognized partnerships, as described in §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in order of the Board's waiting list:

(1) that requested care in the ZIP code where the provider with the open reserved slot is located; and

(2) whose child is in the age group for which a slot is available.

(h) In accordance with Commission guidelines, Boards that enter into contracted slots agreements shall submit a report to the Commission within six months of entering into a contract, determining the contract's effect on the:

(1) financial stability of providers participating in the contract;

(2) availability of high-quality child care options available to participants in the Commission's subsidy program;

(3) number of high-quality providers in any part of the workforce area with a high concentration of families that need child care;

(4) percentage of children participating in the Commission's subsidized child care program at each Texas Rising Star provider in the workforce area; and

(5) additional information as requested by the Commission.

(i) A Board shall resubmit the report every 12 [six] months from the due date of the Board's initial report to the Commission.

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## SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

### 40 TAC §809.112, §809.115

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

#### §809.112. Suspected Fraud.

(a) A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

(1) A request for reimbursement in excess of the amount charged by the provider for the child care; or

(2) A claim for child care services if evidence indicates that the person may have:

(A) known, or should have known, that child care services were not provided as claimed;

(B) known, or should have known, that information provided is false or fraudulent;

(C) received child care services during a period in which the parent or child was not eligible for services;

(D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or

(E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

(b) The following parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Commission to initiate a fraud investigation:

(1) Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

(A) household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or

(B) work, training, or education hours that would have resulted in ineligibility; or

(2) Not reporting during the 12-month eligibility period inclusive of the three-month initial job search period, if applicable:

(A) changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income); or

(B) a permanent loss of job or cessation of training or education that exceeds three months; or

(C) improper or inaccurate reporting of attendance.

§809.115. *Corrective Adverse Actions.*

(a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:

- (1) the scope of the violation;
- (2) the severity of the violation; and
- (3) the compliance history of the person or entity.

(b) Corrective actions for providers may include, but are not limited to, the following:

- (1) Closing intake;
- (2) Moving children to another provider selected by the parent;
- (3) Withholding provider payments or reimbursement of costs incurred; and
- (4) Recoupment of funds.

(c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:

- (1) The basis for the Service Improvement Agreement;
- (2) The steps required to reach compliance including, if applicable, technical assistance;
- (3) The time limits for implementing the improvements; and
- (4) The consequences of noncompliance with the Service Improvement Agreement.

(d) The Board shall develop policies and procedures to ensure that the Board or the Board's child care contractor take corrective action consistent with subsections (a) - (c) of this section against a provider when a provider performs the attendance reporting function on behalf of a parent. [?]

~~[(1) possesses, or has on the premises, attendance cards without the parent being present at the provider site;]~~

~~[(2) accepts or uses an attendance card or PIN of a parent or secondary cardholder; or]~~

~~[(3) performs the attendance reporting function on behalf of a parent.]~~

(e) The Board shall develop policies and procedures to require the Board's child care contractor to take corrective action consistent with subsections (a) - (c) of this section against a parent when a parent violates the Commission rules and procedures related to attendance reporting. [~~or parent's secondary cardholder gives his or her:~~]

~~[(1) card to a provider; or]~~

~~[(2) PIN to a provider.]~~

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

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## SUBCHAPTER G. TEXAS RISING STAR PROGRAM

### 40 TAC §§809.130 - 809.136

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.130. *Short Title and Purpose.*

(a) The rules contained in this subchapter may be cited as the Texas Rising Star Program rules.

(b) The purpose of the Texas Rising Star Program rules is to interpret and implement Texas Government Code, §2308.3155 [~~§2308.3155(b)~~], which requires the Commission to establish rules to administer the Texas Rising Star program, including guidelines for rating a child care provider for Texas Rising Star certification and designation of an Entry Level child care provider.

(c) The Texas Rising Star Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the Texas Rising Star guidelines.

(d) The Texas Rising Star guidelines [~~for rating a child care provider~~] shall:

(1) describe measures for [the] Texas Rising Star certification [~~program~~] that contain, at a minimum, measures for child care providers regarding:

- (A) director and staff qualifications and training;
- (B) teacher-child interactions;
- (C) program administration; and
- (D) indoor/outdoor environments;

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments; ~~and~~

(3) specify the scoring methodology and scoring thresholds for each certified star level; and ~~[-]~~

(4) describe the high and medium-high CCR deficiencies points threshold pursuant to §809.131 of this chapter and the process for designating providers at the Entry Level.

(c) The Texas Rising Star guidelines:

(1) shall be reviewed and updated by the Commission at a minimum of every four years in conjunction with the rule review of this chapter ~~[Chapter 809]~~, conducted pursuant to Texas Government Code, §2001.039, and the Texas Rising Star guidelines review shall:

(A) consider input from stakeholders; and

(B) include at least one public hearing held prior to submitting the stakeholder input to the Commission;

(2) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(3) may be reviewed and amended as determined necessary by the Commission in accordance with the requirements of the Texas Open Meetings Act.

*§809.131. Requirements ~~[Eligibility]~~ for the Texas Rising Star Program.*

(a) A regulated child care provider is eligible ~~[to apply]~~ for certification under the Texas Rising Star program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from CCR ~~[ECL]~~;

(2) has at least 12 months of licensing history with CCR ~~[ECL]~~, and is not on:

(A) corrective action with a Board pursuant to Subchapter F of this chapter;

(B) a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages); or

(C) corrective or adverse action with CCR ~~[ECL]~~; and

(3) meets the criteria for star-level certification in the Texas Rising Star guidelines pursuant to §809.130(d) of this subchapter ~~[requirements to be designated as a Pre-Star provider as specified in §802.2(18) of this chapter]~~.

(4) has at minimum, a center director account ~~[and teaching staff]~~ registered in the Texas Early Childhood Professional Development System Workforce Registry; or

(5) is regulated by and in good standing with the United States ~~[U.S.]~~ Military.

(b) Regulated child care providers not meeting the Texas Rising Star certification requirements described in this subchapter and established in the Texas Rising Star guidelines shall be initially designated as Entry Level if the child care provider:

(1) is not on corrective or adverse action with CCR; and

(2) does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 12-month period as established in the guidelines.

(c) A provider initially meeting the requirements in subsection (b) of this section is eligible for mentoring services through the Texas

Rising Star program during the time periods described in subsections (d) - (f) of this section.

(d) A provider shall be initially designated as Entry Level for no more than 24 months unless approved for a waiver under subsection (f) of this section.

(e) An Entry Level provider will be reviewed for Texas Rising Star certification after the first 12 months of the 24-month period. If an Entry Level provider is not certified as Texas Rising Star after the first 12 months, the provider may receive up to two six-month extensions and:

(1) shall continue to receive new family referrals during the first six-month extension; and

(2) if a provider requires and receives a second six-month extension, shall not receive new family referrals during the second six-month extension.

(f) The Agency may approve a waiver of the time limit under subsection (d) of this section if the provider is:

(1) located in a child care desert or serves an underserved population as determined by the Agency;

(2) unable to meet the certification requirements due to a federal or state declared emergency/disaster; or

(3) unable to meet the certification requirements due to conditions that the Agency determines are outside the provider's control.

(g) Waivers approved under subsection (f) of this section shall not exceed a total of 36 months.

*§809.132. Impacts ~~[Impact of Certain Deficiencies]~~ on Texas Rising Star Certification.*

(a) A Texas Rising Star-certified ~~[Texas Rising Star]~~ provider shall be placed on suspension status ~~[lose Texas Rising Star certification]~~ if the provider:

(1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;

(2) is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 ~~[of the Texas Labor Code]~~ (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 ~~[of the Texas Labor Code]~~ (Payment of Wages);

(3) is placed on corrective or adverse action by CCR ~~[ECL]~~;

(4) had 15 or more total high or medium-high weighted licensing deficiencies during the most recent 12-month licensing history;

(5) had more than four probationary impacts during its three-year certification period;

(6) had a consecutive third probationary impact; ~~[or]~~

(7) is cited for specified CCR ~~[ECL]~~ minimum standards regarding weapons and ammunition; or ~~[-]~~

(8) is not meeting at least the Two-Star level due to non-compliance with Texas Rising Star guidelines at the most recent assessment of certification.

(b) Texas Rising Star-certified ~~[Texas Rising Star]~~ providers with any of the specified "star level drop" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 12-month CCR ~~[ECL]~~ licensing history shall be placed on a six-month Texas Rising Star ~~[program]~~ probationary period. Furthermore:

(1) reduction of one star level for each deficiency cited, so a Four-Star [4-star] certified provider is reduced to a Three-Star [3-star] provider, a Three-Star [3-star] provider is reduced to a Two-Star [2-star] provider; or

(2) a Two-Star [2-star] provider is placed on suspension status [~~loses certification~~].

(c) Texas Rising Star certified providers with any of the specified "probationary" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 12-month CCR [CCL] licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:

(1) Texas Rising Star providers on a six-month Texas Rising Star probationary period that are cited by CCR [CCL] for any additional specified probationary deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star [2-star] certified provider being placed on suspension status [losing certification];

(2) if CCR [CCL] does not cite any additional specified probationary deficiencies during the probationary period, the provider can be removed from probation status; and

(3) if any additional specified probationary deficiencies are cited by CCR [CCL] during the second probationary period, the Texas Rising Star provider shall be placed on suspension status [lose certification].

(d) Texas Rising Star-certified [Texas Rising Star] providers with 10 to 14 total high or medium-high weighted licensing deficiencies during the most recent 12-month CCR [CCL] licensing history shall be placed on a six-month Texas Rising Star program probationary period. Furthermore:

(1) Texas Rising Star-certified [Texas Rising Star] providers on a six-month probationary period that are cited by CCR [CCL] within the probationary period for any additional high or medium-high weighted deficiencies shall be placed on a second, consecutive probation and lose a star level, with a Two-Star [2-star] provider being placed on suspension status [losing certification];

(2) if no additional high or medium-high weighted deficiencies are cited by CCR [CCL] during the probationary period, the provider can be removed from probation status; and

(3) if any new high or medium-high weighted deficiencies--not to exceed 14 total deficiencies--are cited by CCR [CCL] during the second six-month probationary period, a provider shall be placed on suspension status [lose Texas Rising Star certification].

(e) Certified providers not on suspension status [Providers losing Texas Rising Star certification] shall be eligible to request a reassessment [reapply for certification] after six months following the suspension date [~~loss of the certification~~], as long as no deficiencies described in subsections (b) - (d) of this section occur within the six-month reduction time frame.

(f) Certified providers in suspension status [Providers losing Texas Rising Star certification] shall be eligible to request a reassessment [reapply for certification] after six months following the suspension date [~~loss of the certification~~], as long as no deficiencies described in subsections (b) - (d) of this section are cited during the previous six months [~~disqualification period~~].

(g) Certified providers in suspension status shall achieve at least a Two-Star certification no later than 12 months following the suspension. Failure to achieve at least a Two-Star certification within the 12-month period will result in the provider's ineligibility to provide child care services under this chapter.

(h) Certified providers on suspension status:

(1) shall be eligible to provide child care services under this chapter as long as the provider meets at least the Entry Level criteria described in §809.131(b) of this chapter;

(2) shall not be eligible for the enhanced reimbursement rate and shall be reimbursed at the Board's Entry Level reimbursement rate; and

(3) the provider shall not be able to receive referrals from a new family during the last six months of the 12-month period, unless the provider is located in a child care desert or serves an underserved population, and is approved by the Agency to accept new family referrals.

(i) Certified providers in suspension status that fail to achieve at least a Two-Star certification by the end the 12-month suspension period:

(1) are not eligible to provide child care services under this chapter;

(2) are not eligible for the Entry Level designation time frame described in §809.131(e) of this chapter;

(3) are not eligible for the extension waiver described in §809.131(f) of this chapter; and

(4) must subsequently meet at least a Two-Star certification eligibility and screening requirements to provide child care services under this subchapter.

§809.133. Application and Assessments for [the] Texas Rising Star Certification [Program].

(a) Texas Rising Star certification applicants must complete:

(1) an orientation on the Texas Rising Star guidelines, including an overview of the:

- (A) Texas Rising Star program application process;
- (B) Texas Rising Star program measures; and
- (C) Texas Rising Star program assessment process;

(2) the creation of a continuous quality improvement plan; and

(3) a Texas Rising Star program self-assessment tool.

(b) The Agency's designated Texas Rising Star assessment entity [Boards] shall ensure that:

(1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;

(2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;

(3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 of this subchapter and requests certification under [to participate in] the Texas Rising Star program; and

(4) Texas Rising Star certification is granted for any provider that is assessed and verified as meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star guidelines.

(c) The Agency's designated Texas Rising Star assessment entity [Boards] shall ensure that Texas Rising Star certification assessments are conducted as follows:

(1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for Texas Rising Star certification and at each scheduled recertification; and

(2) Recertification of all certified Texas Rising Star providers every three years.

(d) The Agency's designated Texas Rising Star assessment entity [Boards] shall ensure that certified Texas Rising Star providers are monitored on an annual basis and the monitoring includes:

(1) at least one unannounced on-site visit; and

(2) a review of the provider's licensing compliance as described in §809.132 of this ~~chapter~~ [subchapter].

(e) The Agency's designated Texas Rising Star assessment entity [Boards] shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of nationally accredited child care facilities and child care facilities regulated by the United States [US] Military.

(f) The Agency's designated Texas Rising Star assessment entity [Boards] shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of certified Texas Rising Star providers that have a change of ownership, move, or expand locations.

(g) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for implementing and supporting a continuous quality improvement framework.

*§809.134. Minimum Qualifications for Texas Rising Star Staff.*

(a) Boards and the Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star staff:

(1) meets the background check requirement consistent with Chapter 745 of this title; and

(2) completes the Texas Rising Star standards training, as described in the Texas Rising Star guidelines.

(b) ~~[(a)]~~ Boards shall ensure that Texas Rising Star mentor staff meets ~~meet~~ the minimum requirements in subsections ~~(c) - (f)~~ [(b) - (g)] of this section.

(c) ~~[(b)]~~ Texas Rising Star mentor staff shall meet the minimum education requirements as follows:

(1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;

(2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or

(3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science, and [with] two years of suitable experience [as a director] in [an] early childhood education as determined by the Board [program, with preference given to experience with a provider that is accredited or Texas Rising Star certified].

(d) ~~[(e)]~~ The Commission may grant a waiver of no more than two years to obtain the minimum education requirements in subsection ~~(c) [(b)]~~ of this section if a Board can demonstrate that no applicants in its workforce area meet the minimum education requirements.

(e) ~~[(d)]~~ Texas Rising Star mentor staff shall meet the minimum work experience requirements of one year of full-time early child-

hood classroom experience in a child care, EHS, HS, or pre-K through third-grade school program.

~~[(e)] Texas Rising Star staff shall meet the background check requirement consistent with Chapter 745 of this title.]~~

~~(f) All mentors must attain mentor microcredentialing, as described in the Texas Rising Star Guidelines.~~

~~[(f)] Texas Rising Star staff shall demonstrate:]~~

~~[(1) knowledge of best practices in early childhood education; and]~~

~~[(2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.]~~

~~(g) Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star staff shall attain and maintain the Texas Rising Star Assessor Certification, as described in the Texas Rising Star Guidelines [meet the following training and certification criteria:]~~

~~[(1) All staff must complete the Texas Rising Star standards training, as described in the Texas Rising Star guidelines.]~~

~~[(2) All assessors must attain and maintain the Texas Rising Star Assessor Certification, as described in the Texas Rising Star guidelines.]~~

~~[(3) All mentors must attain mentor micro-credentialing, as described in the Texas Rising Star guidelines.]~~

*§809.135. Texas Rising Star [TRS] Process for Reconsideration.*

The Agency's designated Texas Rising Star assessment entity [Boards] shall ensure a process for reconsideration of facility assessment [at the Board level] for Texas Rising Star certification [the TRS program]. Texas Rising Star assessments are [The TRS program is] not subject to Chapter 823 of this title [relating to; the] Integrated Complaints, Hearings, and Appeals [rules].

*§809.136. Roles and Responsibilities of Texas Rising Star Staff.*

Boards and the Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star staff members comply with their assigned responsibilities, as applicable.

(1) A mentor is defined as a Board or Board contract ~~[designated]~~ staff member who helps providers obtain, maintain, or achieve higher star levels of certification.

(2) An assessor is defined as a ~~[designated]~~ staff member or contractor of the Agency's designated Texas Rising Star assessment entity who assesses and monitors providers that obtain, maintain, and achieve higher levels of quality.

(3) Dual-role staff is defined as an individual meeting the definitions of a mentor and assessor under this section ~~[designated staff members who assume the role of the assessor and mentor]~~.

(4) For dual-role staff [If an individual performs the duties of both an assessor and a mentor], the Board and the Agency's designated Texas Rising Star assessment entity shall ensure that the individual providing Texas Rising Star mentoring services to a provider does not act as the assessor of that same provider when determining Texas Rising Star certification.

(5) Texas Rising Star staff members are required to complete annual professional development and continuing education consistent with the Texas Rising Star annual minimum training hours requirement for a Texas Rising Star--certified child care center director.

(6) Pursuant to [Per the] Texas Family Code, §261.101, Texas Rising Star staff members are mandated reporters when observing serious incidents as described in the Texas Rising Star guidelines.

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

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

##### SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

###### 43 TAC §215.207

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §215.207 concerning final orders for contested cases. These amendments are necessary to implement amended Occupations Code §2301.713, concerning motions for rehearing on contested cases involving vehicle warranties, and to more closely conform the rule language with Occupations Code §2301.711.

EXPLANATION. House Bill 3514, 87th Legislature, Regular Session (2021) amended Occupations Code §2301.713, regarding motions for rehearing on contested cases that arise under Occupations Code §2301.204 or Subchapter M of Chapter 2301. The amendments authorize the chief hearings examiner to designate a person to decide the motions for rehearing. Under Occupations Code §2301.711, any of the department's hearings examiners are authorized to sign final orders in these matters. Existing rule language only authorizes the chief hearing's examiner to respond to motions for rehearing and sign subsequent final orders. The proposed amendments to §215.207 implement this new delegation authority and eliminate any potential, inadvertent conflict between the statute and the department's rule.

The following paragraphs address the amendments in this proposal.

The amendment to subsection (a) clarifies that the final order that is the subject of the motion for rehearing may be issued by the board or a delegated person, in accordance with Occupations Code §2301.711.

The amendment to subsection (b) clarifies that the final order may be prepared and signed by any of the department's hearings examiners, in accordance with Occupations Code §2301.104 and §2301.711.

The amendment to subsection (c)(1) implements the amendments to Occupations Code §2301.713 by removing language that only authorizes the chief hearings examiner to decide motions for rehearing.

An amendment to subsection (e) implements the amendments to Occupations Code §2301.713 by adding language that allows for the chief hearings examiner's designee to rule on a motion for rehearing. Subsection (e) is also amended to remove a limitation that only the chief hearings examiner can sign a new final order granting the relief requested in the motion for rehearing, to avoid any conflict and to more closely conform with the authority under Occupations Code §2301.711.

An amendment to subsection (f) removes language that is duplicative of Occupations Code §2301.751 and §2301.752 to avoid any inadvertent conflicts with those sections. Occupations Code §2301.751 addresses the courts in which a party may seek judicial review of an action; Occupations Code §2301.752 addresses the deadline for filing a petition for judicial review. An amendment also clarifies that the petition is a petition for judicial review.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to the state or local governments as a result of the enforcement or administration of the proposed amendments.

Edward Sandoval, Chief Hearings Examiner of the Office of Administrative Hearings, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Sandoval has also determined that, for each year of the first five years the amendments are in effect, there is a public benefit anticipated as these amendments eliminate any appearance of bias that might have been believed to occur when the chief hearings examiner ruled on motions for rehearing, rather than the hearings examiner who heard the case.

Anticipated Public Benefits. The department anticipates the public will benefit as a result of a fairer and more efficient appeals process, as well as rules that are consistent with the statutes.

Anticipated Costs To Comply With The Proposal. Mr. Sandoval anticipates that there will be no costs to comply with these amendments. The amendments do not establish any additional requirements on regulated persons as the amendments do not substantially modify a regulated person's filing requirements. The amendments will only affect the department's internal processes after a motion for rehearing has been filed.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the proposal amends §215.207 to comply with statute and imposes no requirements that are not specified in statute. The proposed amendments will not have an effect on small business, micro businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by

this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed amendments are in effect, the proposed rule

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will not create new regulation;
- will not expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on May 29, 2022. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [Rules@txdmv.gov](mailto:Rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The department proposes amendments to §215.207 under Occupations Code §2301.713 and Transportation Code §1002.001.

Occupations Code §2301.713 authorizes the department to adopt rules to establish procedures for motions for rehearing under Occupations Code §2301.204 or Subchapter M of Chapter 2301.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Occupations Code §2301.711 and §2301.713.

*§215.207. Contested Cases: Final Orders.*

(a) A motion for rehearing of a final order issued by the board or a person delegated final order authority for a complaint filed under Occupations Code, Chapter 2301, Subchapters E or M shall proceed in accordance with Occupations Code, §2301.713.

(b) A [The] hearings examiner shall prepare a final order as soon as possible, but not later than 60 days after the hearing is closed, or as otherwise provided by law. The final order shall include the hearings examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all parties by certified mail.

(c) A party who disagrees with the final order may file a motion for rehearing in accordance with Government Code, Chapter 2001,

subject to Occupations Code, Chapter 2301, Subchapter O. A motion for rehearing of a final order issued by a hearings examiner must:

(1) be filed with ~~[and decided by]~~ the chief hearings examiner;

(2) include the specific reasons, exceptions, or grounds asserted by a party as the basis of the request for a rehearing; and

(3) recite, if applicable, the specific findings of fact, conclusions of law, or any other portions of the final order to which the party objects.

(d) Replies to a motion for rehearing must be filed with the chief hearings examiner in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O.

(e) If the chief hearings examiner or the chief hearings examiner's designee grants a motion for rehearing, the parties will be notified by mail and a rehearing will be scheduled promptly. After rehearing, a final order shall be issued with any additional findings of fact or conclusions of law, if necessary to support the final order. A [The chief] hearings examiner may issue an order granting the relief requested in a motion for rehearing or requested in a reply to a motion for rehearing without the need for a rehearing. If a motion for rehearing and the relief requested is denied, an order will be issued.

(f) A party who has exhausted all administrative remedies and who is aggrieved by a final order in a contested case from which appeal may be taken is entitled to judicial review pursuant to Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter P, under the substantial evidence rule. ~~[A petition for judicial review shall be filed in a district court of Travis County within 30 days after the order is final and appealable.]~~ A copy of the petition for judicial review must be served on the final order authority and any other parties of record. After service of the petition and within the time permitted for filing an answer, the final order authority shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders that new evidence be presented to the final order authority, the final order authority may modify the findings and decision or order by reason of the new evidence, and shall transmit the additional record to the court.

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

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TRD-202201425

Aline Aucoin

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-4206

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## SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

### 43 TAC §215.505

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §215.505 concerning denial of access to the temporary tag system. The amendments to §215.505 are necessary to clarify the rule text.

EXPLANATION. The purpose of these amendments is to correct a statutory citation regarding the department's temporary buyer's tag database under Transportation Code §503.0631, to add parentheses around text in §215.505(a)(2) that explains when a vehicle is presumed to not be in the dealer's or converter's inventory, and to change the word "and" to "or" in §215.505(a)(2) in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag database" under §215.505. Section 215.505 contains the process for denial of access to the temporary tag database under Transportation Code §503.0632(f) when the department determines that a dealer or converter is fraudulently obtaining temporary tags from the temporary tag database.

The department made these same amendments via emergency rulemaking with an immediate effective date of April 14, 2022, as published in the Emergency Rules section of this issue of the *Texas Register*. However, emergency rules adopted under Government Code §2001.034 may not be effective for longer than 120 days and may not be renewed for longer than 60 days. The purpose of this proposal is to make the amendments permanent, so the amendments continue to exist even though the emergency amendments will expire. Government Code §2001.034 authorizes a state agency to adopt a rule that is identical to the emergency rule under Government Code §2001.023 and §2001.029.

These amendments are necessary because a subset of dealers will fraudulently obtain temporary tags from the temporary tag database without clarification of the rule text. Fraudulently obtained temporary tags pose a threat to the public health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags to persons who engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement. Criminals use fraudulently obtained temporary tags that are registered under fake names and addresses to make it harder for law enforcement to trace the vehicles. Fraudulently obtained temporary tags also pose a threat to the public health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags to persons who operate uninsured and uninspected vehicles that are hazards to Texas motorists and the environment. Fraudulently obtained temporary tags further pose a threat to the public health, safety, and welfare because criminals can attempt to sell stolen vehicles or unsafe salvage vehicles to unsuspecting buyers by using temporary tags to make the vehicles appear legitimate. Criminals have fraudulently obtained temporary tags from the department's system and used the temporary tags in Texas, as well as other states, such as New York and Nevada. In addition, the use of fraudulently obtained temporary tags could deprive the state of revenue. Criminals will take advantage of any loopholes they see as available to them.

An amendment to §215.505(a) corrects a statutory citation regarding the department's buyer's temporary tag database under Transportation Code §503.0631, which governs the buyer's temporary tag database. Section 215.505(a) cites to Transportation Code §503.06321, which does not exist. Section 215.505 applies to the dealer's and converter's temporary tag database under Transportation Code §503.0626, as well as the buyer's temporary tag database under Transportation Code §503.0631. Amendments to §215.505(a)(2) add parentheses around text that explains when a vehicle is presumed to not be in the dealer's or converter's inventory. The parentheses were included when §215.505(a)(2) was published for proposal in the November 12, 2021, issue of the *Texas Register* (46 TexReg

7752); however, they were inadvertently omitted in the adoption order that was published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 662). Another amendment to §215.505(a)(2) changes the word "and" to "or" in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag database" under §215.505. Together, these clarifying amendments will close any perceived loopholes that criminals might otherwise try to exploit.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will not be a significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the amended section is in effect, the public benefits include clarifications to rule text that help to limit the criminal activity of a small subset of dealers who fraudulently obtain and sell temporary tags to persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement. The public benefits also include clarifications to rule text that help to limit the criminal activity of a small subset of dealers who fraudulently obtain and sell temporary tags to persons who operate uninsured and uninspected vehicles that are hazards to Texas motorists and the environment.

Ms. Thompson anticipates that there will be no costs to comply with these amendments since the amendments clarify the rule text, and it is clear that the existing rule text is intended to have the same meaning as the amended rule text. The people who commented on the original proposed §215.505(a) interpreted the rule text to only require one of the listed activities to constitute "fraudulently obtained temporary tags from the temporary tag database," rather than requiring all three activities outlined in subsections (a)(1) - (3).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because it is clear that the existing rule text is intended to have the same meaning as the amended rule text. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future



legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on May 29, 2022. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The department proposes amendments to §215.505 under Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Transportation Code §§503.0626, 503.0631, 503.0632, and 503.067.

*§215.505. Denial of Dealer or Converter Access to Temporary Tag System.*

(a) In this section "fraudulently obtained temporary tags from the temporary tag database" means a dealer or converter account user misusing the temporary tag database authorized under Transportation Code §503.0626 or §503.0631 [~~§503.0632~~] to obtain:

(1) an excessive number of temporary tags relative to dealer sales;

(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a [a] vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement); or [~~Statement~~; and]

(3) access to the temporary tag database for a fictitious user or person using a false identity.

(b) The department shall deny a dealer or converter access to the temporary tag database effective on the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or converter may seek a negotiated resolution with the department by demonstrating corrective actions taken or that the department's determination was incorrect.

(c) Notice shall be sent to the dealer's or converter's last known email and mailing address in the department's records.

(d) A dealer or converter may request a hearing on the denial as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under this section. The department must receive a written request for a hearing within 26 days of the date of the notice denying access to the database. The request for a hearing does not stay the denial of access under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating corrective actions taken or that the department's determination was incorrect.

(e) The department may also issue a Notice of Department Decision stating administrative violations as provided in §215.500 concurrently with the notice of denial of access under this section. A Notice of Department Decision may include notice of any violation, including a violation listed under subsection (a) of this section.

(f) A department determination and action denying access to the temporary tag database becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

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

Filed with the Office of the Secretary of State on April 14, 2022.

TRD-202201427

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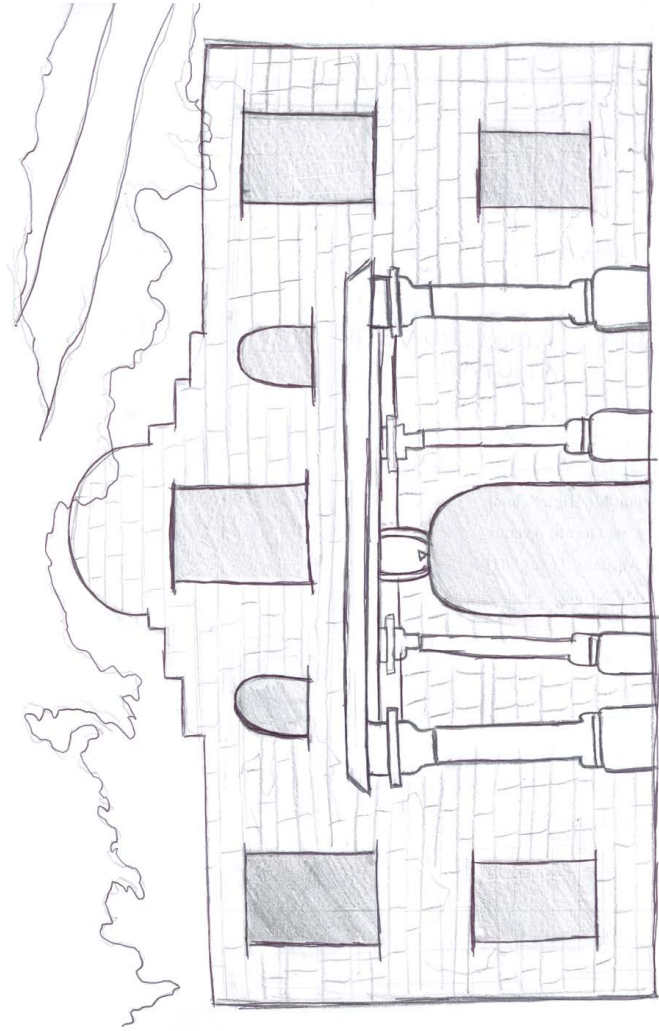
General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: May 29, 2022

For further information, please call: (512) 465-4206

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER B. ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES FOR MEDICAID

##### 1 TAC §355.207

The Texas Health and Human Services Commission (HHSC) adopts new §355.207, concerning American Rescue Plan Act Home and Community-Based Services Provider Retention Payment.

Section 355.207 is adopted with changes to the proposed text as published in the February 4, 2022, issue of the *Texas Register* (47 TexReg 387). This rule will be republished.

##### BACKGROUND AND JUSTIFICATION

The new section establishes the criteria for providers to receive retention payments under the terms of the Texas Health and Human Services Commission's (HHSC) spending plan for the American Rescue Plan Act Home (ARPA) enhanced Home and Community-Based Services (HCBS) funding. Section 9817 of the ARPA temporarily increases the Federal Medical Assistance Percentage by 10 percentage points, up to 95 percent, for certain allowable HCBS medical assistance expenditures under the Medicaid program beginning April 1, 2021, and ending March 31, 2022. HHSC submitted an initial spending plan and spending narrative to the Centers for Medicare and Medicaid Services on July 12, 2021, and received partial approval on August 19, 2021. Part of HHSC's spending plan included recruitment and retention payments to be used for retention bonuses or other activities, for providers delivering attendant and direct care HCBS.

##### COMMENTS

The 21-day comment period ended February 25, 2022.

During this period, HHSC received comments regarding the proposed rule from 11 commenters, including AccentCare, Caregiver Long-term Care Services and Supports, Consumer Direct Care Network Texas, CTD/Coalition of Texans with Disabilities, Husch Blackwell Strategies, Private Providers Association of Texas, Providers Alliance for Community Services of Texas, Texas Association of Health Plans, Texas Association for Home Care and Hospice, and Texas Council of Community Centers.

A summary of comments relating to §355.207 and HHSC's responses follows.

**Comment:** Multiple commenters stated that HHSC should clarify how providers may use funds to include retrospective costs for recruitment and retention efforts that providers have incurred during the COVID-19 Federally declared Public Health Emergency (PHE).

**Response:** HHSC disagrees and declines to revise the rule. HHSC believes the current language in §355.207 allows providers flexibility to use HCBS ARPA funds made under this section for retrospective costs incurred to support personal attendant and nursing staff retention efforts.

**Comment:** A commenter suggested that HHSC should clarify if these rules apply to private duty nursing delivered through an agency model.

**Response:** The rules do not apply to private duty nursing services. HHSC declines to modify the rule as private duty nursing is currently not listed in §355.207(b)(1).

**Comment:** Multiple commenters asked when HHSC will release additional guidance, including training, reporting requirements and data indicators, fee schedule or specific payment information, and a frequently asked question document to providers and managed care organizations regarding the HCBS ARPA funding.

**Response:** HHSC is holding a public hearing to propose temporary HCBS ARPA rate add-ons in April 2022. HHSC intends to release additional guidance related to HCBS ARPA provider retention payments to coincide with the public rate hearing by the end of April 2022. No revisions were made in response to this comment.

**Comment:** Multiple commenters asked HHSC to provide additional information around the purpose, intent, due dates and required data, and other indicators of the required reporting.

**Response:** HHSC revised §355.207(d) and (e) with respect to the due dates for the required reporting. However, HHSC declines to revise the rule to provide additional specifications around the required reporting. As described in §355.207(c)(4), providers are required to submit two reports to HHSC. The initial report will be used to collect baseline data to determine a provider's vacancy rate for attendant and nursing staff. The report will request a provider's total number of attendant and nursing positions filled or vacant as of March 1, 2022. The report will also ask providers how they plan to use the HCBS ARPA funding. HHSC intends to publish a draft of the HCBS ARPA initial reporting tool on the HHSC Provider Finance Department's website. The final report will be used to collect data around a provider's retention rate. The report will request a provider's total number of attendant and nursing positions filled or vacant as of November 1, 2022. The report will also ask providers how they used the HCBS ARPA funding. HHSC intends to publish a draft of the HCBS ARPA final reporting tool on the HHSC Provider Finance Department website. HHSC

intends to provide notice at least thirty calendar days prior to the deadline for each report.

Comment: Multiple commenters asked HHSC to consider allowing funds to be used for temporary increase of direct care wages to be considered hazard pay rather than as one-time or lump-sum bonus payments.

Response: HHSC disagrees and declines to revise the rule. HHSC's spending plan, conditionally approved by the Centers for Medicare and Medicaid Services, limits the use of funds to one-time bonuses for direct care staff delivering HCBS services.

Comment: One commenter asked HHSC to consider allowing the HCBS ARPA to be used to support other recruitment strategies beyond financial compensation for direct care staff such as hiring on-the-ground recruiters.

Response: HHSC disagrees and declines to revise the rule. The terms of HHSC's spending plan require providers to use at least 90 percent of these funds for one-time financial compensation for their direct care workforce, including, but not limited to, lump sum bonuses, retention bonuses, and paid time off for a COVID-19 vaccination.

Comment: Multiple commenters asked HHSC to clarify the time-frame for when HCBS ARPA funds must be expended so that providers have at least a six-month period to expend program funds.

Response: HHSC does not believe the rule limits a provider's time to expend funds. HHSC is amending the final reporting requirements to reflect a provider's staffing levels as of November 1, 2022, to provide providers additional time to expend resources before final reporting is due. However, HHSC is not requiring that all resources are expended by the time final report is due. No revisions were made in response to this comment.

Comment: Multiple commenters asked HHSC to clarify and potentially revise §355.207(h) related to disallowance of federal funds.

Response: HHSC disagrees and declines to revise the rule. HHSC received conditional approval for the agency HCBS ARPA spending plan from the Centers for Medicare and Medicaid Services (CMS) on January 10, 2022. In their letter granting conditional approval, CMS indicated that HCBS provider pay increases funded through the 10 percent temporary increased Federal Medical Assistance Percentage (FMAP) will require an updated rate methodology. HHSC is seeking approval for rate methodology updates applicable to HCBS ARPA funding through a waiver amendment for §1915(c) waiver services and a state plan amendment for state plan services. Section 355.207(h) is necessary to ensure that any funds paid through HCBS ARPA can be recouped if HHSC does not receive final federal approvals.

Comment: Multiple Commenters expressed concerns about how one-time payments paid to direct care staff will impact providers' requirements under the Fair Labor Standards Act (FLSA). Commenters asked if the HCBS ARPA funds used as recruitment bonuses would be considered non-discretionary and would constitute base pay for the purposes of calculating FLSA overtime for direct care staff.

Response: HHSC disagrees and declines to revise the rule. HHSC believes the requirements for financial compensation for direct care staff in the rule are flexible enough to allow providers

to construct their bonus plans in a manner that complies with FLSA since HHSC is not mandating a particular bonus method.

Comment: Multiple commenters asked HHSC to make revisions to §355.207(c)(3) to remove reference to hourly wages paid on an ongoing basis.

Response: HHSC disagrees and declines to revise the rule. HHSC does not believe the suggested revisions are necessary to clarify programmatic requirements.

Comment: Multiple commenters asked HHSC to make revisions to §355.207(c)(4) to clarify "other indicators" related to direct care staff recruitment and retention.

Response: HHSC agrees and revises the rule to clarify that "other indicators" is related to how the provider will use funds made under this section.

Comment: A commenter asked HHSC to extend the public comment period to allow providers to provide additional comments after HHSC has provided clarifying information regarding the HCBS ARPA funding.

Response: HHSC established a 21-day comment period to ensure §355.207 could be adopted and funds paid to providers as expediently as possible given providers' concern about direct care staffing resources for HCBS services. No revisions were made in response to this comment. HHSC is holding a public rate hearing on April 11, 2022, to receive testimony related to the proposed HCBS ARPA temporary add-on rates.

Comment: A commenter asked HHSC add an appeal process to reconciliation and overpayment process.

Response: HHSC declines to revise the rule. Available appeal processes are described elsewhere in state law.

Comment: Multiple commenters asked HHSC to clarify if the HCBS ARPA funds can be used to cover an employer's payroll, unemployment, worker's compensation taxes associated with making HCBS ARPA payments to direct care staff.

Response: HHSC agrees and revised §355.207(c)(2) to clarify the section does not preclude employers from using funds to cover reasonable and necessary costs associated with making payments to direct care staff. In addition, this section requires that the provider use up to 90 percent of funds for payments to direct care staff. The remaining 10 percent can be used at the provider's discretion including to cover reasonable administrative and operations expenses associated with making the payments.

Comment: One commenter asked if MCOs will need to monitor or manage providers who have not completed required attestation as specified in §355.207(d).

Response: HHSC does not intend for MCOs to be required to monitor or manage providers compliance with the attestation requirement. HHSC may request that MCOs share information regarding the additional payments, and attestation and reporting requirements with their contracted providers. HHSC will notify MCOs through existing recoupment processes whether a provider is eligible for recoupment due to non-attestation or failure to report. No revisions were made in response to this comment.

Comment: One commenter asked if the required reporting specified in §355.207(c)(4) would be submitted to MCOs or if there was any required reporting for MCOs.

Response: Providers would be required to submit an attestation and two required reports to HHSC. There is no additional reporting required of MCOs at this time. No revisions were made in response to this comment.

Comment: One commenter asked how the payments influenced the capitation rates.

Response: The capitation rate adjustments are based on estimated projected service utilization of HCBS services and are consistent with HHSC rate and fiscal projections that inform the capitation rates. No revisions were made in response to this comment.

Comment: Multiple commenters asked HHSC to clarify the role MCOs will have in reconciliation and overpayment processes as defined in §355.207(f) - (g).

Response: HHSC will notify MCOs through existing recoupment processes whether a provider is eligible for recoupment due to non-attestation or failure to report. No revisions were made in response to this comment.

Comment: Multiple commenters asked HHSC to clarify the time frame for distribution of funds, including how that distribution will require claims to be retrospectively adjusted.

Response: HHSC's intention is that payments will be made on claims with service dates between March 1, 2022, through August 31, 2022. Claims will be reprocessed to the beginning of the payment period. No revisions were made in response to this comment.

Comment: Multiple commenters asked about how providers who contract with multiple MCOs may be impacted.

Response: HCBS ARPA provider retention payments are not considered a directed payment program. MCOs may operationalize payments differently than HHSC's fee-for-service processes. HHSC is working closely with each MCO to ensure the funds are dispersed to their contracted providers for the purpose of one-time recruitment and retention bonuses for direct care staff. Providers have discretion to use the funds from each MCO differently as long as they meet the requirements specified in §355.207(c).

Comment: Multiple commenters asked HHSC to clarify the requirement regarding how Financial Management Services Agencies should allocate the ARPA funds to each employer.

Response: HHSC will be holding a public rate hearing to propose temporary add-on rates for the ARPA HCBS provider retention payments in April 2022. HHSC intends to provide additional guidance on how funds will be allocated on a per service basis including for Consumer Directed Services (CDS) prior to the scheduled rate hearing. No revisions were made in response to this comment.

#### STATUTORY AUTHORITY

The new section 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; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human

Resources Code Chapter 32. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

#### §355.207. American Rescue Plan Act Home and Community-Based Services Provider Retention Payments.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to establish retention payments for Home and Community-Based Services (HCBS) under HHSC's spending plan pursuant to section 9817 of the American Rescue Plan Act.

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

##### (1) Direct Care staff--

(A) A provider, or an employer in the consumer directed services (CDS) option, who provides the following services, as described in Title 40 Texas Administrative Code (TAC) §49.101 (relating to Application):

(i) Community Attendant Services program services;

(ii) Primary Home Care program services;

(iii) day activity and health services;

(iv) in the Community Living Assistance and Support Services Program:

(I) community first choice personal assistance services/habilitation (CFC PAS/HAB);

(II) habilitation (transportation);

(III) supported employment;

(IV) in-home respite;

(V) nursing services; or

(VI) specialized nursing services;

(v) in the Deaf-Blind Multiple Disabilities Program:

(I) CFC PAS/HAB;

(II) residential habilitation (transportation);

(III) in-home respite;

(IV) licensed assisted living;

(V) licensed home health assisted living;

(VI) supported employment;

(VII) day habilitation;

(VIII) nursing services; or

(IX) specialized nursing services;

(vi) in the Home and Community-Based Services Program:

(I) CFC PAS/ HAB;

(II) supported home living (transportation);

(III) supervised living;

(IV) residential support services;

(V) day habilitation;

(VI) supported employment;

- (VII) in-home respite;
- (VIII) nursing services; or
- (IX) specialized nursing services; and
- (vii) in the Texas Home Living Program:
  - (I) CFC PAS/HAB;
  - (II) community support services (transportation);
  - (III) day habilitation;
  - (IV) supported employment;
  - (V) in-home respite;
  - (VI) nursing services; or
  - (VII) specialized nursing services.

(B) A provider or employee or subcontractor of a provider who provides the following services in the Home and Community-Based Services--Adult Mental Health (HCBS-AMH) Program, as described in 26 TAC §307.51(relating to Purpose and Application):

- (i) supervised living;
- (ii) supported home living; or
- (iii) nursing services.

(C) An employee or subcontractor of a provider, or an employee of an employer in the CDS option who provides:

- (i) personal care services, as described in Chapter 363, Subchapter F of this title (relating to Personal Care Services); or
- (ii) CFC habilitation (CFC HAB) or CFC personal assistance services (CFC PAS), as described in Chapter 354, Subchapter A, Division 27 of this title (relating to Community First Choice).

(D) A provider or an employer in the CDS option who provides:

- (i) in the STAR+PLUS program and STAR+PLUS HCBS program:
  - (I) assisted living;
  - (II) CFC PAS;
  - (III) CFC HAB;
  - (IV) day activity and health services;
  - (V) in-home respite care;
  - (VI) personal assistance services;
  - (VII) supported employment;
  - (VIII) protective supervision;
  - (IX) nursing services; or
  - (X) specialized nursing services;
- (ii) in the STAR Health program and Medically Dependent Children Program (MDCP):
  - (I) day activity and health services;
  - (II) CFC PAS;
  - (III) CFC HAB;
  - (IV) flexible family support;

- (V) in-home respite;
- (VI) personal care services;
- (VII) nursing services; or
- (VIII) specialized nursing services; and
- (iii) in the STAR Kids program and MDCP:
  - (I) CFC PAS;
  - (II) CFC HAB;
  - (III) personal care services;
  - (IV) day activity and health services;
  - (V) flexible family support services;
  - (VI) in-home respite;
  - (VII) nursing services; or
  - (VIII) specialized nursing services.

(2) Managed care organization (MCO)--Has the meaning assigned in §353.2 of this title (relating to Definitions).

(3) Provider--Refers to an HHSC contractor as defined in §355.7051(a)(1) of this title (relating to Base Wage for a Personal Attendant) and provider as defined in §353.2 of this title.

(c) Eligibility. To receive and maintain retention payments from HHSC under this section:

(1) A provider must be actively billing Medicaid services.

(2) A provider must agree to use at least 90 percent of payments made under this section for recruitment and retention efforts for direct care staff delivering HCBS services as defined in subsection (b) of this section. Payments made under this section can include financial compensation directed toward direct care staff, including lump-sum bonuses, retention bonuses, and paid time off to receive a COVID-19 vaccination or to isolate after receiving a positive COVID-19 test. Funds under this section can be used to pay payroll and unemployment taxes and workers' compensation necessary to implement the financial compensation for HCBS direct care staff.

(3) A provider must agree not to use the payments made under this section to increase hourly wages paid to direct care staff on an ongoing basis and to limit use of the funds to types of compensation that will not result in future reductions to hourly wages when the payments are discontinued.

(4) A provider must submit two required reports regarding use of funds made under this section in a manner prescribed by HHSC. Required reporting includes furnishing data to document vacancy rates in direct care staff positions and direct care staff retention percentage and other indicators related to a provider's use of the funds made under this section as defined by HHSC.

(5) HHSC must receive approval from Centers for Medicare & Medicaid Services (CMS) for the provider type or specific service to be paid under this section.

(d) Attestation of Agreement. A provider must submit an electronic attestation of agreement to comply with subsection (c)(2) - (c)(3) of this section as specified by HHSC. HHSC will provide notice at least thirty calendar days prior to the attestation deadline.

(e) Required reporting. A provider must submit required reporting to comply with subsection (c)(4) of this section. The required reports will be due on dates specified by HHSC. HHSC will provide at

least thirty calendar day notice prior to the required deadline for each report.

(f) Reconciliation process. HHSC uses the methodology in this subsection to recoup the payments made under this section if a provider fails to submit the attestation of agreement under subsection (d) or required reporting under subsection (e) of this section.

(1) HHSC will reduce reimbursement rates for any claim for services to the amount that would have been paid to the provider absent the HCBS retention payment rate increase.

(2) The provider's claims will be reprocessed at the lower reimbursement rate under paragraph (1) of this subsection and an account receivable will be established.

(3) The provider will be paid on a normal per claim basis after the equivalent amount of the account receivable has been collected by HHSC, or its designee.

(4) After 270 days from the date of the establishment of the account receivable under paragraph (2) of this subsection, HHSC will recoup any overpayments owed under paragraph (1) of this subsection by demanding immediate repayment of any outstanding amount.

(g) Overpayment.

(1) If payments under this section result in an overpayment to a provider, HHSC, or its designee, may recoup an amount equivalent to the overpayment.

(2) Payments made under this section may be subject to any adjustments for payments made in error or due to fraud, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations, and state and federal statutes. HHSC, or its designee, may recoup an amount equal to any such adjustments from the providers in question. This section may not be construed to limit the independent authority of another federal or state agency or organization to recover from the provider for a payment made due to fraud.

(h) Disallowance of federal funds. If payments under this section are disallowed by CMS, HHSC may recoup the amount of the disallowance from providers that participated in the program associated with the disallowance. If the recoupment from a provider for such a disallowance results in a subsequent disallowance, HHSC will recoup the amount of that subsequent disallowance from the same entity.

(i) Duration. Payments under this section will be made for services delivered between March 1, 2022, and August 31, 2022, or as specified by HHSC.

(j) A provider that has a contract for financial management services (FMS) must ensure that an employer in the CDS option, or designated representative, uses payments made under this section as defined in subsection (c)(2) - (c)(3) of this section.

(k) An MCO must require an MCO contractor, other than an MCO contractor described in subsection (j) of this section, to use payments made under this section as defined in subsection (c) of this section.

(l) An MCO must require that an MCO contractor that has a contract for FMS ensures that an employer in the CDS option or designated representative uses payments made under this section as defined in subsection (c)(2) - (c)(3) of this section.

(m) Payment methodology. HHSC calculates payments made under this section in the following manner:

(1) Total approved funding pool is divided proportionally based on historical claims paid from all HCBS services to calculate an anticipated funding amount for each service.

(2) Anticipated funding amount for each HCBS service is divided by projected utilization for the program period to calculate a per unit payment factor for each service.

(3) Payments under this section will be distributed on claims for services delivered during the duration specified in subsection (i) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2022.

TRD-202201358

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 1, 2022

Proposal publication date: February 4, 2022

For further information, please call: (512) 424-6637



## SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

### 1 TAC §355.312

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.312, concerning Reimbursement Setting Methodology--Liability Insurance Costs.

Section 355.312 is adopted without changes to the proposed text as published in the January 21, 2022, issue of the *Texas Register* (47 TexReg 141). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

The purpose of the adopted amendment is to streamline the payment of liability insurance add-on rates by replacing the current certification requirements with an annual provider attestation to be completed during an open enrollment period. The amendment seeks to improve the timeliness of payments for add-on rates to nursing facility (NF) providers serving Medicaid residents for maintaining acceptable liability insurance coverage, in accordance with Section 32.028(h) of the Texas Human Resources Code. The adopted amendment defines eligibility criteria and clarifies how the add-ons are paid for new facilities and for facilities undergoing a change of ownership. This amendment also describes the circumstances under which HHSC may recoup the add-on payments.

#### COMMENTS

The 31-day comment period ended February 21, 2022.

During this period, HHSC did not receive any comments regarding the proposed rule.

#### 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 Human Resources Code §32.028(h), which requires the Executive Commissioner of HHSC to ensure that the rules governing the determination of rates paid for nursing facility services provide for the rate component derived from reported liability insurance costs to be paid only to those facilities that purchase liability insurance acceptable to HHSC; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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 April 11, 2022.

TRD-202201363

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: January 21, 2022

For further information, please call: (737) 867-7817



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.1

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.1 Reasonable Accommodation Requests to the Department, without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 833). The purpose of the proposed repeal is to eliminate the current rule while replacing it with a more current version of the rule. The repealed rule will not be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

##### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the handling of requests for reasonable accommodations.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand or contract the applicability of an existing regulation.

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

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from February 25, 2022, to March 25, 2022, to receive input on the proposed action. No comment was received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed action affects no other code, article, or statute.



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 April 18, 2022.

TRD-202201452

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 8, 2022

Proposal publication date: February 25, 2022

For further information, please call: (512) 475-3959



## 10 TAC §1.1

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.1 Reasonable Accommodation Requests to the Department, without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 834). The rule will not be republished. The purpose of the rule is to: update definitions including bringing several definition into concurrence with definitions in other Department rules, include phone number and email as requested contact information, clarify the process to be used in the handling of Reasonable Accommodations by staff, allow staff to grant approvals of Reasonable Accommodation requests, and make other minor non-substantive revisions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the handling of requests for reasonable accommodations.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.
6. The new section will not expand or contract an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

### b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

### d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period will be held from February 25, 2022, to March 25, 2022, to receive input on the proposed action. No comment was received.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## 10 TAC §1.2

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administra-

tion, Subchapter A, General Policies and Procedures, §1.2 Department Complaint System to the Department, without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 835). The purpose of the repeal is to eliminate the current rule while replacing it with a more current version of the rule. The repealed rule will not be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the process to be used for persons wishing to file a complaint with the Department.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand or contract the applicability of an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

**c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

**d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

**e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

**f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT.** The public comment period was held from February 25, 2022, to March 25, 2022, to receive input on the action. No comment was received.

**STATUTORY AUTHORITY.** The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed action affects no other code, article, or statute.

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 April 18, 2022.

TRD-202201456

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 8, 2022

Proposal publication date: February 25, 2022

For further information, please call: (512) 475-3959



**10 TAC §1.2**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.2 Department Complaint Process without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 836). The rule will not be republished. The purpose of the proposed rule is to: update definitions, clarify the applicability of the rule, improve the organization of the rule, clarify what occurs upon receipt of a complaint including when no contact information has been provided and when the complaint may involve a reasonable accommodation request, and make other procedural and minor revisions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the process to be used for persons wishing to file a complaint with the Department.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.

6. The new section will not expand or contract an existing regulation.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from February 25, 2022, to March 25, 2022, to receive input on the proposed action. No comment was received.

STATUTORY AUTHORITY. The new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to

adopt rules. Except as described herein the new section affects no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2022.

TRD-202201457

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: February 25, 2022

For further information, please call: (512) 475-3959



### 10 TAC §1.13

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13 Contested Case Hearing Procedures, without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 838). The purpose of the repeal is to eliminate the current rule while replacing it with a more current version of the rule. The repealed rule will not be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the procedures to be used in the case of contested case hearings.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand or contract the applicability of an existing regulation.

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

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be a more clear rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held February 25, 2022, to March 25, 2022, to receive input on the proposed action and no comment was received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed action affects no other code, article, or statute.

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 April 18, 2022.

TRD-202201460

Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 8, 2022

Proposal publication date: February 25, 2022

For further information, please call: (512) 475-3959



## 10 TAC §1.13

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13 Contested Case Hearing Procedures, without changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 839). The rule will not be

republished. The purpose of the new rule is to improve clarity, revise how notice will be served, and to denote that a hearing may be initiated at the request of the Board.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the procedures to be used in the case of contested case hearings.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.

6. The new section will not expand or contract an existing regulation.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be

a more clear rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held February 25, 2022, to March 25, 2022, to receive input on the proposed action and no comment was received.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

The rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2022.

TRD-202201458

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## 10 TAC §1.19

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.19 Reallocation of Financial Assistance, without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 841). The purpose of the repeal is to eliminate the current rule while replacing it with a more current version of the rule. The repealed rule will not be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to how the Department will reallocate financial assistance.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule

changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand or contract the applicability of an existing regulation.

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

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held February 25, 2022, to March 25, 2022, to receive input on the proposed action. No comments were received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the action affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



### 10 TAC §1.19

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.19 Reallocation of Financial Assistance, without changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 842). The rule will not be republished. The purpose of the rule is to: add to the list of circumstances in which reallocation may be warranted, to clarify the documents that may address deobligation and reallocation, and to make other administrative clarifications.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

#### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to how the Department will reallocate financial assistance.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.
6. The new section will not expand or contract an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

#### b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

#### c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

#### d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

#### e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

#### f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT.** The public comment period was held February 25, 2022, to March 25, 2022, to receive input on the proposed action. No comment was received.

**STATUTORY AUTHORITY.** The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new section affects no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



### 10 TAC §1.22

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22 Providing Contact Information to the Department, without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 843). The rule will not be re-

published. The purpose of the repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the requirement that any person or entities doing business with the Department must notify the Department of any change in contact information.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand or contract the applicability of an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not

be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held February 25, 2022, to March 25, 2022, to receive input on the proposed action. No comment was received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the action affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## 10 TAC §1.22

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22 Providing Contact Information to the Department, without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 844). The rule will not be republished. The purpose of the rule is to change how updated contact information is provided to the Department and make other minor non-substantive revisions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the requirement that any person or entities doing business with the Department must notify the Department of any change in contact information.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.

6. The new section will not expand or contract an existing regulation.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT.** The public comment period was held February 25, 2022, to March 25, 2022, to receive input on the proposed action. No comment was received.

**STATUTORY AUTHORITY.** The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new section affects no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 7. GAS SERVICES

The Railroad Commission of Texas (Commission) adopts amendments to §7.455, relating to Curtailment Standards with changes and the repeal of §7.305, relating to Curtailment Program, without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7940). The Commission adopts the amendments to §7.455 and the repeal of §7.305 to update the current curtailment priorities and programs contained in Oil and Gas Docket, Gas Utilities Division No. 20-62,505, Docket 489, commonly known as Order 489. Amended §7.455 will be republished. Repealed §7.305 will not be republished.

The Commission received comments on the proposed amendments from seven associations and nine companies or organizations. The comments are summarized below.

Order 489, which is superseded by the amendments to §7.455, allowed gas utilities to file with the Commission a specific curtailment program, unique to its operations, for approval. In the absence of a filed and approved specific curtailment program pursuant to Rule 1, a gas utility was required to follow the Rule 2 priorities in Order 489 during a curtailment event. Rule 2 of Order 489 prioritized the sale and/or delivery of natural gas to a list of specific end-users and industries in the event a gas utility experiences a curtailment event, with deliveries for residences, hospitals, schools, churches and other human needs customers as the top priority. The priority list in Order 489 and, if applicable, an approved curtailment program, necessarily only took effect when a gas utility must curtail some or all of its transportation and/or sale of natural gas. In times of normal operations, a gas utility may transport and/or sell natural gas pursuant to applicable Commission rules, state law, and its private contractual agreements.

Since Order 489 was issued by the Commission in January 1973, there have been significant changes in both the natural gas and electric industries. The Commission recognizes the need to update the curtailment priorities in response to those changes. Importantly, in February 2021, the Commission issued an emergency order in recognition of the energy emergency due to Winter Storm Uri. The emergency order temporarily modified the natural gas utility curtailment priorities in Order 489 to ensure the protection of natural gas human needs customers and electric generation customers.

During Winter Storm Uri and since, the Commission received feedback from stakeholders impacted by the emergency order. The majority of stakeholder feedback indicated the emergency



order had significant value during the storm and expressed support for the priorities in the emergency order; namely, the elevation of natural gas deliveries for electric generation to a higher priority.

Therefore, the amendments to §7.455 are intended to fully replace and supersede Order 489 and will govern the transportation and/or sale of natural gas by gas utilities during a curtailment event. The amendments reflect the same top two priorities as the emergency order with a few changes based on stakeholder feedback received after Winter Storm Uri and during the comment period.

#### *§7.455(a) - Definitions*

New subsection (a) includes definitions for "Commission," "Curtailment event," "Electric generation facilities," "Gas utility," and "Human needs customers." In consideration of comments received, the Commission adopts subsection (a) with new definitions of "balancing authority," "firm or firm deliveries," and "interruptible or interruptible deliveries." The Commission also adopts subsection (a) with changes to proposed definitions of "curtailment event," "electric generation facilities," and "human needs customers."

Comments from Atmos Pipeline Texas (APT), ONEOK WesTex Transmission LLC (ONEOK), Texas LDCs (Atmos Energy Corporation's Mid-Tex and West Texas Divisions; CenterPoint Energy Resources, and Texas Gas Service Company), the Texas Pipeline Association (TPA), the Texas Independent Producers and Royalty Owners Association (TIPRO), and the Texas Oil and Gas Association (TXOGA) requested clarification regarding what constitutes a curtailment event. Specifically, these comments asked the Commission to clarify that interruptions in service to interruptible customers do not constitute a curtailment event. The Commission agrees. This interpretation is consistent with how the Commission has historically interpreted its curtailment order, Order 489. Gas utilities interrupt deliveries to interruptible customers pursuant to contracts or tariffs. These interruptions must occur before any firm customers are curtailed and, therefore, a curtailment event only applies to firm deliveries. The Commission adopts the definition of "curtailment event" with changes to reflect this position. The Commission also adopts a corresponding change in subsection (c), which is discussed further below.

APT and the Texas LDCs requested the definition of "curtailment event" be revised to clarify that a curtailment event can occur whether the gas utility pipeline provides transportation services or bundled sales. The Commission agrees but adopts a change in subsection (b) to address this concern.

Oxy Energy Services, Inc. (Oxy) and TIPRO asked that a curtailment event be limited to situations where an identifiable disruptive event significantly reduces the availability of natural gas. Relatedly, the South Texas Electric Cooperative (STEC) and Texas Competitive Power Advocates (TCPA) requested changes to the definition of curtailment event to prevent gas utilities from unilaterally determining whether curtailment is necessary. The Commission disagrees because circumstances that prompt a curtailment event vary and the gas utility is in the best position to determine when its ability to deliver gas to firm customers is inadequate. Additionally, the Commission is concerned that narrowing the definition of a curtailment event could inadvertently make the rule inapplicable during an event in which the rule should apply.

Alternatively, STEC and TCPA requested a requirement for gas utilities to define what constitutes a curtailment event in their tariffs and explain their process for allocating scarce gas sup-

plies. TCPA recommended that gas utilities be required to make their Commission-approved curtailment plan publicly available on their websites. The Commission notes that incorporating Order 489 into §7.455 will ensure greater transparency for how gas supplies are allocated during a curtailment event and utilizing one definition of curtailment for all gas utilities increases regulatory consistency. During a curtailment event, a gas utility must allocate gas according to the priorities in subsection (c) of §7.455. A gas utility may file its own curtailment plan for approval with the Commission. However, the Commission adopts changes in §7.455(d) to incorporate notice and an opportunity for hearing when a curtailment plan is filed.

The Commission also received several comments requesting changes to the definition of "electric generation facilities." APT commented that the definition is too broad. The Texas LDCs and the Texas Public Power Association (TPPA) asked that the definition include only those facilities that are actually capable of delivering electricity to the grid and exclude generation facilities that only produce electricity for a customer's own consumption. The Texas LDCs suggested narrowing the definition to facilities that are required to register with the appropriate balancing authority because those facilities are capable of delivering electricity to the grid. The Commission agrees with these comments and adopts the definition of electric generation facilities with a change such that electric generation facilities are defined as facilities registered with the applicable balancing authority including bulk power system assets, co-generation facilities, distributed generation, and backup power systems.

STEC commented that electric generating facilities should be included in the definition of "electric generation facilities" and that the "or" in the proposed definition should be an "and." The Commission adopts the definition with a change to replace "or" with "and." The Commission interprets the term "bulk power system assets" to include electric generating facilities.

Due to the addition of "balancing authority" in the revised definition of "electric generation facilities," the Commission adopts §7.455 with a new definition of "balancing authority," which is defined as the Electric Reliability Council of Texas or other responsible entity that integrates resource plans ahead of time, maintains electricity demand and resource balance within a balancing authority area, and supports interconnection frequency in real time for a power region in Texas. The definition of "balancing authority" mirrors the definition in the North American Electric Reliability Corporation's reliability standards.

The following commenters asked that the Commission add definitions of "firm" and "interruptible:" the Atmos Cities Steering Committee (ACSC), CoServ Gas, Ltd. (CoServ), the Fortifying & Bolstering Semiconductor Success Coalition (FABSS), STEC, and TCPA. The Commission agrees. It is the Commission's understanding that a customer with firm service will have a contract or tariff that describes the service or delivery obligation as "firm." Therefore, the Commission adopts subsection (a) with a new definition of "firm or firm deliveries." Firm or firm deliveries are natural gas deliveries that are described as firm under a contract or tariff. The Commission also adopts subsection (a) with a new definition of "interruptible or interruptible deliveries." Interruptible or interruptible deliveries are natural gas deliveries that are not described as firm under a contract or tariff. The Commission does not have jurisdiction or authority over natural gas transportation or supply contracts and leaves it to the parties to those contracts to describe with detail the terms of their agreement.

STEC requested that the definition of "firm" clarify that it applies only to firm transportation, not firm supply, as firm supply can be cancelled in the event of a force majeure. It is the Commission's understanding that both firm supply and firm transportation can be cancelled in the event of a force majeure, so the Commission declines to make this change.

Relatedly, ACSC asked that the Commission explain how force majeure clauses in contracts fit into §7.455. The Commission declines to address this concern. Interpreting private contractual agreements is outside the Commission's authority. Whether a force majeure is properly issued under a contract is a question for the district courts of this state.

The Commission received three comments on the proposed definition of "human needs customers." First, the City of Houston requested that the definition be revised to include water and wastewater services. The Commission agrees and has revised the definition as requested.

TPPA asked whether the language "locations where people may congregate in an emergency" in the proposed definition of human needs customers includes city and county shelters. The Commission interprets this language to include city and county shelters and other places where people may congregate in an emergency.

The Texas LDCs asked that the definition of human needs customers include small commercial customers that the LDCs cannot practically curtail without curtailing human needs customers. The comments stated that because residential, commercial, governmental, and industrial customers are all generally served off the same pipelines, there may be circumstances where an LDC is not able to curtail its non-residential customers without curtailing human needs. The Commission agrees and adopts the definition of "human needs customers" with the requested change.

#### *Subsection (b) - Applicability*

Subsection (b) explains who is subject to the rule's requirements and when the requirements apply. The Commission recognizes that the new curtailment standards may take time to implement, and therefore, the Commission adopts subsection (b) with a change to the proposed effective date. The new effective date is September 1, 2022. After September 1, 2022, when any gas utility operating in Texas experiences a curtailment event as defined in the rule, the gas utility shall curtail deliveries according to the priorities listed in proposed subsection (c) unless and until the gas utility has an approved curtailment plan pursuant to subsection (d).

Oxy and TPA requested changes to subsection (b). Oxy asked the Commission to clarify that §7.455's requirements only apply for the duration of a curtailment event and only to the extent necessary to protect human needs and public safety. TPA asked that the term "protecting" be replaced with "serving," and that the Commission remove language requiring a utility to serve human needs "to whatever extent necessary" because the priorities adopted in subsection (c) address how human needs shall be prioritized. The Commission understands the proposed language could be interpreted too broadly and adopts subsection (b) with changes to address Oxy's and TPA's concerns.

As discussed in the next section of the preamble, several commenters raised questions about proposed language in subsection (c), particularly regarding the Commission's jurisdiction and which gas deliveries are subject to §7.455. As discussed below, the Commission removed proposed subsection (c) in the

adopted version of §7.455. Therefore, the Commission has addressed concerns about proposed subsection (c) with changes to subsection (b). First, the Commission adopts subsection (b) with a change to clarify that §7.455 applies only to intrastate service on a gas utility's intrastate natural gas pipelines. The Commission has no jurisdiction over interstate pipelines. Second, the Commission adopts subsection (b) with new language stating that §7.455 applies to gas sales of natural gas owned by a gas utility and/or deliveries utilizing a gas utility's transportation capacity. The Texas LDCs asked that the Commission clarify that curtailments apply to transportation as well as sales. Oxy suggested language stating that the curtailment priorities in the rule apply only to natural gas volumes and transportation capacity that is owned by a gas utility and shall not be applied to redirect natural gas volumes owned by unregulated entities. The Commission agrees with the Texas LDCs and agrees in part with Oxy. The rule applies to deliveries of utility-owned gas as well as deliveries utilizing a gas utility's transportation capacity. Therefore, when a curtailment event occurs, a gas utility that owns the gas molecules in the pipeline must ensure its sales are made in accordance with the priorities in adopted subsection (c). If a curtailment event causes insufficient capacity on a gas utility pipeline and the capacity can only be used to deliver gas to certain firm customers, the rule would require that transportation capacity be utilized in accordance with the priorities in subsection (c).

However, as Oxy's comment noted, the rule does not require that gas utility pipelines redirect gas that is owned by unregulated entities (i.e., third party marketers) according to the priorities in subsection (c). As stated in *Railroad Commission of Texas v. City of Austin*, "the Commission has jurisdiction to regulate and apportion the sales and disposition of gas owned by each gas utility, so as to protect the public interest. This does not mean that all the gas in Texas is under the full control of the Commission. It may not deprive a person or a corporation which is not a gas utility of gas owned by such person or corporation. The fact that gas owned by someone or some entity other than the gas utility is being transported in a pipeline owned by a utility does not subject that gas to a disposition by the Commission. It may not determine title to gas, nor may it operate retroactively upon a transfer of title to gas." *R.R. Comm'n of Tex. v. City of Austin*, 524 S.W.2d 262, 280-81 (Tex. 1975). To clarify this concept, the Commission adopts subsection (b) with new language at the end of the subsection, including language stating that the term "deliveries" in §7.455 includes sales and/or transportation service.

#### *Subsection (c) - Standards*

STEC and TCPA asked the Commission to clarify the types of natural gas pipelines that are required to comply with §7.455. TPA and TPPA commented that proposed subsection (c) conflicts with the priorities outlined in proposed subsection (d). TPA suggested removing proposed subsection (c). TPPA requested clarification regarding the meaning of "feasible" in proposed subsection (c). ONEOK, TXOGA, and TPA requested that "intrastate" be added in subsection (c) to clarify the Commission's jurisdiction.

As mentioned above, the Commission agrees that proposed subsection (c) created a potential conflict. Therefore, the Commission removes proposed subsection (c) ("Standards") and adopts subsection (b) ("Applicability") with several changes to address commenters' concerns.

#### *Subsection (d) - Priorities*

Due to comments, the Commission removed proposed subsection (c) and adopts proposed subsection (d) as subsection (c). The priorities contained in proposed subsection (d) are now found in §7.455(c).

Section 7.455(c) contains the priorities, listed in descending order, for use by gas utilities during a curtailment event. The priorities are largely incorporated from the emergency order issued during Winter Storm Uri. One notable difference between the emergency order and the priorities in subsection (d) is the inclusion of "firm" at the beginning of each category. This language is added to clarify that the requirements of §7.455 apply to firm deliveries of natural gas and the rule does not apply to interruptible deliveries, which are interrupted pursuant to mutually agreed upon contracts or tariffs prior to a curtailment event.

The Commission received several comments on the proposed priorities. Oxy commented that the rule should focus on prioritizing human needs, electric generation for human needs, and processes for public safety. Oxy asked that proposed subsections (d)(1)(D)-(F) be eliminated because they make the hierarchy overly complex and difficult to administer. The Commission disagrees. The priorities in adopted subsection (c)(1)(D)-(F) have been administered by gas utilities for almost 50 years. The Commission concludes including the categories in subsection (c)(1)(D)-(F) assists gas utilities in prioritizing the top three categories.

STEC and TCPA requested that electric generation facilities be elevated to the first priority alongside human needs customers. The Commission disagrees. Including both electric generation facilities and human needs customers in the top priority would place too many customers in the top priority and risk curtailment of residential natural gas customers. Preventing curtailment of residential natural gas customers is essential because a residential customer's gas must be shut-off and re-lit in person. Gas utility personnel must visit each individual home at least twice if a gas distribution system becomes inoperable--once to shut off the gas valve at the home and again to re-start the gas service. Loss of gas to residential customers also increases the likelihood that individuals will attempt to relight appliances and turn valves at their homes without proper safety precautions, presenting a significant public safety risk. If residential customers are curtailed because they are not exclusively top priority, it could take gas utilities months or longer to relight pilot lights and restore service to a significant portion of the over 4.5 million residential customers (households) with natural gas service in Texas.

STEC commented that in a true emergency or in extreme weather, interruptible deliveries to human needs and electric generation should be second only to firm deliveries to human needs and electric generation. Similarly, TPPA commented that interruptible supply to human needs customers, electric generation customers, and for plant protection should be prioritized above the other firm customers. Golden Spread Electric Cooperative, Inc. requested that the Commission include interruptible deliveries to electric generation facilities alongside firm deliveries to electric generation facilities. FABSS requested including interruptible deliveries below each priority. For example, FABSS proposed including interruptible deliveries to human needs customers below firm deliveries to human needs customers but above firm deliveries to electric generation facilities.

The Commission disagrees that interruptible deliveries should be elevated because, as adopted, §7.455 only applies in a curtailment event and does not govern interruptions in service to interruptible customers made pursuant to contracts or tariffs. The

Commission notes that prioritizing firm service over interruptible service incentivizes customers that want firm service to seek out and contract for firm service and incentivizes gas utilities to make additional investment in storage and pipeline capacity to provide firm service. The direct costs of firm service are incurred by the customers that purchase firm service. Elevating interruptible customers above customers who have purchased firm service weakens the incentives of this construct. In Texas, the costs of firm service to natural gas LDC customers are directly passed through to LDC customers who benefit from reliability resulting from firm service.

The Commission's proposal included language in proposed subsection (d)(1)(H) that instructed gas utilities how to interrupt their interruptible deliveries. The Commission does not adopt this language in §7.455. APT, the Texas LDCs, and TPA explained in their comments that interruptible deliveries are conducted in accordance with the governing contract or tariff, and that proposed subsection (d)(1)(H) interfered with customers' ability to receive the level of service for which they have contracted and paid. Confusion about whether interruptible deliveries constitute a curtailment event created more support for removing proposed subsection (d)(1)(H).

Regarding the second priority in subsection (c)(1)(B), Enchanted Rock, LLC's comment noted that firm fuel delivery options for distributed generation or backup power systems are sometimes not offered by local distribution companies. Enchanted Rock asked that the Commission consider elevating interruptible deliveries of natural gas to electric generation when firm delivery service is not offered. FABSS's comment requested that interruptible deliveries to human needs customers, electric generation facilities, and for plant protection be elevated alongside firm deliveries when firm deliveries are not available on a commercially reasonable basis.

It is the Commission's understanding that firm service is not offered to certain customers for two reasons: (1) because pipeline capacity is insufficient to support firm service; and/or (2) because the customer is located at the end of the pipeline such that pipeline pressure is insufficient to support firm service. The Commission declines to elevate deliveries to these customers because granting them a higher priority would only be artificial - during a curtailment event, the pipeline capacity and/or pressure would still be insufficient to support prioritizing these customers.

The language in the third priority (§7.455(c)(1)(C)) addresses human safety concerns over the unplanned shut down of certain industrial and commercial plants due to natural gas curtailment. Specifically, there are large industrial and commercial plants located throughout the state that, without at least a minimum flow of natural gas, are unable to safely shut down operations without putting on-site staff and the surrounding public in potential danger. Therefore, subsection (c) requires prioritizing deliveries of a minimum amount of natural gas required to prevent physical harm and/or ensure critical safety to plant facilities, to plant personnel, or the public when such protection cannot be achieved through the use of an alternate fuel. APT and the Texas LDCs noted that this provision will be difficult to administer and may require new tariff provisions requiring customers to certify their plant protection needs so the gas utility knows how to prioritize those needs in a curtailment event. The Commission understands that gas utilities may need to propose new tariff provisions or otherwise implement new procedures to ensure they have correct information from customers. Similarly, ONEOK, TPA, and TXOGA commented requesting clarification that a gas

utility may rely on the representations of its customers and/or their end users regarding the nature of the customers' deliveries. The Commission agrees and has included that language in subsection (c)(3).

FABSS requested that the third priority include language regarding preventing personal injury in addition to preventing physical harm and ensuring critical safety. The Commission interprets the term "physical harm" to include personal injury and declines to adopt subsection (c)(1)(C) with that change.

TXOGA requested a new provision to prioritize deliveries to motor fuel producers supporting critical infrastructure or emergency response. The Commission finds this provision would be difficult to administer. It is unclear how much gas would be necessary to support motor fuel producers and what is intended by "critical infrastructure or emergency response." Also, it is the Commission's understanding that motor fuel was generally available during Winter Storm Uri such that a changing the priorities in effect during Uri to address this issue is unnecessary.

The Commission adopts §7.455(c)(1)(A)-(G) with changes to remove references to "natural gas" in each priority. With the new definition of "firm or firm deliveries" in §7.455(a), including "natural gas" in each priority is redundant. The Commission also adopts non-substantive changes in subsection (c)(1)(E) and (F) to ensure language is consistent.

Section 7.455(c)(2) clarifies how customers within the same priority shall be curtailed. The proposed amendments indicated that customers within a priority class shall be curtailed to the extent practicable on an equal basis. ACSC noted that the term "priority class" did not appear elsewhere in the proposed rule and asked that the term be defined or changed to "priority." The Commission agrees and adopts subsection (c)(2) with a change to remove "class." APT noted that curtailment should only apply to customers within the same priority on the portion of the system subject to curtailment. Similarly, the Texas LDCs and TPA requested clarification that if a curtailment event is limited to a specific segment or LDC, then the gas utility is not required to apply the priorities to segments or systems that are not experiencing a curtailment event. The Commission agrees and adopts subsection (c)(2) with changes to address these concerns.

Coserv, Oxy, and TPA requested the Commission clarify what "on an equal basis" means. Oxy and Coserv suggested that curtailment of customers within the same priority be conducted on a pro rata basis. The Commission agrees and adopts subsection (c)(2) with a change to require curtailment of customers within the same priority on a pro rata basis according to scheduled quantities.

ONEOK, TXOGA, and TPA requested language clarifying that a pipeline has no obligation to conduct an investigation into its customers' representations about which priority a customer falls under. The Commission agrees that when applying the priorities of §7.455, a gas utility may rely on the representations of its customers and/or their end users regarding the nature of customers' deliveries. The Commission adopts new subsection (c)(3) to address this issue.

#### *Subsection (d) - Curtailment Plans*

Section 7.455(d) explains the effect of the proposed amendments to §7.455 on Order 489 and existing curtailment plans. Currently, the Commission has six approved curtailment plans on file. On September 1, 2022, §7.455 supersedes Order 489 and any existing curtailment plans. Subsection (d) allows a gas

utility to file its own curtailment plan for approval with the Oversight and Safety Division. The first three priorities in any individual curtailment plan must be consistent with the first three priorities listed in subsection (c)(1)(A) - (C) and (2) of this section. A gas utility would be required to follow the priorities listed in subsection (c) unless and until the gas utility has an approved curtailment plan on file with the Commission.

Regarding the proposed language on curtailment plans, the City of Houston requested that LDCs be required to submit a specific curtailment plan that identifies customers that provide critical public safety services rather than allowing LDCs to use the priorities as a default plan. The Commission declines to adopt a change to address this comment because it is more appropriately addressed in the City of Houston's franchise agreement with its gas utility.

Coserv, Oxy, and TPPA requested that the Commission require notice of a curtailment plan filing and opportunity for a hearing. The Commission agrees and adopts subsection (d) with a change to require gas utilities to provide notice of a curtailment plan to their customers. A curtailment plan can only be approved administratively if no request for hearing is submitted within thirty days of the date of notice. Subsection (d) requires notice to be made in the form prescribed by the Commission. Prior to September 1, 2022, the Commission will develop and post on its website a notice form for gas utilities to use in accordance with the requirements of this subsection.

#### *Subsection (e) - Required tariff filings*

Section 7.455(e) requires that gas utilities file a tariff with the Commission to include the curtailment priorities in §7.455 or the gas utility's curtailment plan if a plan is approved by the Commission. This requirement ensures customers have information regarding the gas utility's curtailment plan. The Texas LDCs recommended changing "curtailment standards" to "curtailment priorities." The Commission agrees and adopts subsection (e) with "curtailment priorities."

#### *Subsection (f) - Curtailment emergency contact information*

Subsection (f), proposed as subsection (g), is adopted without changes to the proposed text.

#### *Removal of language related to the Natural Gas Policy Act of 1978*

Existing language in §7.455 is removed because interstate pipelines and Natural Gas Policy Act, §311(b) pipelines are subject to the jurisdiction of the Federal Energy Regulation Commission (FERC).

Coserv commented that this language should not be removed because these pipelines are not subject to FERC jurisdiction and the language is needed to ensure availability of gas to customers of Texas intrastate pipelines in times of curtailment. ONEOK and TPA support the removal of this language and asked the Commission to further clarify this concept by adding "intrastate" transportation capacity in proposed subsection (c). The Commission agrees with ONEOK and TPA and clarifies this concept in subsection (b) ("Applicability"). The Commission disagrees with CoServ that the Commission has the applicable jurisdiction related to this rulemaking over Section 311(b) pipelines.

#### *Additional Comments*

STEC and TCPA requested a requirement that natural gas pipelines estimate curtailable gas demand by criticality tier and, subsequent to a curtailment event, submit data to the Commis-

sion regarding the amount of gas curtailed and delivered. STEC also asked that information regarding intrastate pipelines be made available similar to information on interstate pipelines. The Commission disagrees with these comments. First, criticality tier is not a term addressed in the rule. Second, estimating curtailable gas in advance of a curtailment event would be difficult without prior knowledge of the pipeline segment or segments that might be subject to curtailment, the cause of the curtailment event, and/or the duration of the curtailment event, all of which could vary widely. Third, posting gas volumes curtailed could lead to disclosure of sensitive customer information. Customer and delivery point information has been deemed confidential by the Office of the Attorney General (Tex. Att'y Gen. ORD-552 (1990)). In addition, it is the Commission's understanding that information on interstate pipelines is made available because interstate pipelines are required to offer available capacity on an open access basis at cost-of-service rates. Posting available capacity is important for the interstate system because the interstate regulatory construct allows potential shippers to subscribe to and swap capacity if it is available. However, Texas law does not require pipelines to offer unbundled capacity. Texas law allows pipelines to negotiate their rates instead of requiring cost-of-service rates. Finally, the Commission concludes its proposal did not indicate to those required to comply with the amendments that extensive reporting requirements could be implemented. Therefore, the Commission views this suggestion as outside the scope and improper to implement without further opportunity for notice and comment.

FABSS requested a new curtailment scheme in which an application process allows qualified customers to register with their natural gas utility or LDC to be prioritized during a curtailment event. The Commission concludes its proposal did not indicate to those required to comply with the amendments that a new curtailment scheme could be implemented. Therefore, the Commission views this suggestion as outside the scope and improper to implement without further opportunity for notice and comment.

TIPRO asked the Commission to clarify that the curtailment rules only apply under an order by the Commission. The Commission disagrees. Section 7.455 applies during a curtailment event, which is triggered by a gas utility's determination that its ability to deliver gas may become inadequate to support continuous service to firm customers on its system.

#### *Section 7.305 - Curtailment Program*

The Commission repeals §7.305, relating to Curtailment Program, because §7.305 requires utilities to follow Order/Docket 489, which is superseded by the amendments to §7.455.

The Commission adopts the repeal under Title 3 of the Texas Utilities Code, which gives the Commission jurisdiction over gas utility pipelines in Texas.

### **SUBCHAPTER C. RECORDS AND REPORTS; TARIFFS; GAS UTILITY TAX**

#### **16 TAC §7.305**

Statutory authority: Title 3 of the Texas Utilities Code, including §102.001, §102.003, and §121.151.

Cross-reference to statute: Texas Utilities Code, Chapters 101-105 and Chapter 121.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Haley Cochran

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Railroad Commission of Texas

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For further information, please call: (512) 475-1295

### **SUBCHAPTER D. CUSTOMER SERVICE AND PROTECTION**

#### **16 TAC §7.455**

The Commission adopts the amendments under Title 3 of the Texas Utilities Code, which gives the Commission jurisdiction over gas utility pipelines in Texas.

Statutory authority: Title 3 of the Texas Utilities Code, including §102.001, §102.003, and §121.151.

Cross-reference to statute: Texas Utilities Code, Chapters 101-105 and Chapter 121.

§7.455. *Curtailment Standards.*

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

(1) Balancing authority--The Electric Reliability Council of Texas or other responsible entity that integrates resource plans ahead of time, maintains electricity demand and resource balance within a balancing authority area, and supports interconnection frequency in real time for a power region in Texas.

(2) Commission--The Railroad Commission of Texas.

(3) Curtailment event--When a gas utility determines that its ability to deliver gas may become inadequate to support continuous service to firm customers on its system and it reduces deliveries to one or more firm customers. For the purposes of this section, an interruption of delivery or service to interruptible gas customers does not constitute a curtailment event. Prior to reducing deliveries to one or more firm customers, a gas utility interrupts deliveries to interruptible customers pursuant to mutually agreed upon contracts and/or tariffs.

(4) Electric generation facilities--Facilities registered with the applicable balancing authority including bulk power system assets, co-generation facilities, distributed generation, and backup power systems.

(5) Firm or firm deliveries--Natural gas deliveries that are described as firm under a contract or tariff.

(6) Gas utility--An entity that operates a natural gas transmission pipeline system or a local distribution company that is subject to the Commission's jurisdiction as defined in Texas Utilities Code, Title 3.

(7) Human needs customers--Residences, hospitals, water and wastewater facilities, police, fire, military and civil defense facilities, and locations where people may congregate in an emergency such as schools and places of worship. A human needs customer also includes small commercial customers that cannot practicably be curtailed without curtailing human needs.

(8) Interruptible or interruptible deliveries--Natural gas deliveries that are not described as firm under a contract or tariff.

(b) Applicability. This section takes effect on September 1, 2022. This section applies when any gas utility experiences a curtailment event affecting intrastate service on any of its intrastate natural gas pipelines. When a gas utility experiences a curtailment event, the gas utility shall curtail deliveries according to the priorities listed in subsection (c) of this section unless and until the gas utility has an approved curtailment plan pursuant to subsection (d) of this section. The curtailment priorities in this section apply to sales of natural gas owned by a gas utility and/or deliveries utilizing a gas utility's transportation capacity. The priorities in this section do not apply to sales of gas owned by an entity that is not a gas utility. The term "deliveries" in this section includes sales and/or transportation service.

(c) Priorities.

(1) Unless a gas utility has an approved curtailment plan pursuant to subsection (d) of this section, a gas utility shall apply the following priorities in descending order during a curtailment event:

(A) firm deliveries to human needs customers and firm deliveries of natural gas to local distribution systems which serve human needs customers;

(B) firm deliveries to electric generation facilities;

(C) firm deliveries to industrial and commercial users of the minimum natural gas required to prevent physical harm and/or ensure critical safety to the plant facilities, to plant personnel, or the public when such protection cannot be achieved through the use of an alternate fuel;

(D) firm deliveries to small industrials and regular commercial loads that use less than 3,000 Mcf per day;

(E) firm deliveries to large industrial and commercial users for fuel or as a raw material where an alternate fuel or raw material cannot be used and operation and plant production would be curtailed or shut down completely when natural gas is curtailed;

(F) firm deliveries to large industrial and commercial users for fuel or as a raw material where an alternate fuel or raw material can be used and operation and plant production would be curtailed or shut down completely when natural gas is curtailed; and

(G) firm deliveries to customers that are not covered by the priorities listed in subparagraphs (A) - (F) of this paragraph.

(2) Deliveries to customers within the same priority on the portion of the system which is subject to curtailment shall be curtailed to the extent practicable on a pro rata basis according to scheduled quantities. If a customer's end-use requirements fall under two or more priorities, then such requirements must be treated separately when applying this schedule of priorities to the extent practicable. Transportation customers have equivalent end-use priorities as sales customers.

(3) When applying the priorities of this section, a gas utility may rely on the representations of its customers and/or their end users regarding the nature of customers' deliveries.

(d) Curtailment plans. Order 489 and any curtailment plan approved by the Commission prior to the effective date of this section is superseded by this section. A gas utility may file its own curtailment plan for approval with the Oversight and Safety Division. A gas utility shall follow the priorities listed in subsection (c) of this section unless and until the gas utility has an approved curtailment plan on file with the Commission. The first three priorities in any individual curtailment plan must be consistent with the first three priorities listed in subsection (c)(1)(A) - (C) and (2) of this section. A gas utility shall provide to its customers notice of an application for a curtailment plan. A gas utility shall provide notice on the same day the gas utility files its

application with the Commission. The gas utility may provide notice by hand delivery, by first class, certified, registered mail, commercial delivery service, electronic methods, or by such other manner as the Commission may require. The notice shall be in the form prescribed by the Commission. The Oversight and Safety Division may administratively approve the curtailment plan if no request for hearing is filed within thirty days of such notice. The Commission shall set the matter for hearing if it receives a timely request for hearing from a customer of the gas utility.

(e) Required tariff filings. Within 90 days of the effective date of this section, each gas utility shall electronically file with the Commission, in the manner prescribed by the Commission, tariffs that shall include either:

(1) the curtailment priorities as specified in this section; or

(2) a curtailment plan approved by the Commission as specified in subsection (d) of this section.

(f) Curtailment emergency contact information. Each gas utility shall maintain current curtailment emergency contact information with the Commission and shall submit curtailment emergency contact information on or before November 1 of each year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Railroad Commission of Texas

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## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §§84.3; and Subchapter M, §§84.500, 84.502 - 84.504, and 84.507, regarding the Driver Education and Safety Program, without changes to the proposed text as published in the February 4, 2022, issue of the *Texas Register* (46 TexReg 402). These rules will not be republished.

The Commission also adopts revisions to the following program guides: the Program of Organized Instruction in Driver Education and Traffic Safety Exclusively for Adults Six-Hour Course (POI-Adult Six-Hour); the Course of Organized Instruction for Driving Safety (COI-Driving Safety); the Program of Organized Instruction for Drug and Alcohol Driving Awareness Programs (POI-DADAP); and the Course of Organized Instruction for Specialized Driving Safety (COI-Specialized Driving Safety), without changes to the proposed text as published in the February 4, 2022, issue of the *Texas Register* (47 TexReg 554). These guides will not be republished.

The Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE) for minor and adult driver education courses was adopted by the Commission with changes recommended by the Traffic Safety Advisory Committee and will be republished in the Texas Register - In Addition section.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Occupations Code, Chapter 1001, relating to Driver Education and Safety (DES).

The adopted rules are necessary to implement Senate Bill (SB) 1831, House Bill (HB) 3212, and HB 3319, 87th Legislature, Regular Session (2021), which amend Texas Education Code, Chapter 1001, to require that the curriculum of each driver education and driving safety course include information relating to, respectively, human trafficking prevention, the dangers and consequences of street racing, and the legal requirements for the passing of certain vehicles. The adopted rules implement these bills by updating the driver training curriculum requirements in the DES Program Guides adopted by reference in the rules.

#### SECTION-BY-SECTION SUMMARY

The adopted rules amend §84.3, Materials Adopted by Reference, by updating the date and year reference to the driver training program guide editions that have been modified as a result of the legislative implementation for SB 1831, HB 3212 and HB 3319.

The adopted rules amend §84.500, Courses of Instruction for Driver Education Schools, by including information relating to human trafficking prevention, the dangers and consequences of street racing, and the passing of certain vehicles as described in Transportation Code §545.157 in the rule text for the driver education course curriculum, and the POI-DE and POI-Adult Six-Hour program guides relating to classroom instruction, in-car training, and simulations.

The adopted rules amend §84.502, Driving Safety Courses of Instruction, by including information relating to human trafficking prevention, the dangers and consequences of street racing, and the passing of certain vehicles as described in Transportation Code §545.157 in the rule text for the driver safety course curriculum, and the COI-Driving Safety program guide; and updating rule language to reflect implementation changes in the program guide.

The adopted rules amend §84.503, Specialized Driving Safety Courses of Instruction, by including information relating to human trafficking prevention, the dangers and consequences of street racing, and the passing of certain vehicles as described in Transportation Code §545.157 in the rule text for the specialized driver safety course curriculum, and the COI-Specialized Driving Safety program guide; and updating rule language to reflect implementation changes in the program guide.

The adopted rules amend §84.504, Driving Safety Course Alternative Delivery Method, by updating rule language to reflect the bill implementation changes in the COI-Driving Safety and COI-Specialized Driving Safety program guides.

The adopted rules amend §84.507, Driving Safety Course for Drivers Younger than 25 Years of Age (DSY25), by: (1) including information relating to human trafficking prevention, the dangers and consequences of street racing, and the passing of certain vehicles as described in Transportation Code §545.157 in the rule text for the DSY25 driver safety course educational ob-

jectives and curriculum; (2) correcting rule language; and (3) renumbering subsections accordingly.

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 4, 2022, issue of the *Texas Register* (47 TexReg 402). The deadline for public comments was March 7, 2022. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

#### ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Education and Traffic Safety Advisory Committee met on March 15, 2022, to discuss the proposed rules and any public comments received. The Advisory Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to the POI-DE, Module Eleven, Classroom Instruction Minimum Timeframes Chart which are as follows:

1. Chart Section 11.1.4, Anatomical Gifts, has been changed by correcting the lesson number to "29"; and
2. The minutes remaining for allocation to topics applicable to Module Eleven was changed from 15 minutes to 25 minutes after Advisory Board discussion. Thus, the sentence immediately below the chart has been changed to read: *"The remaining 25 minutes of instruction shall be allocated to the topics included in this Module that satisfy the educational objectives of the course."*

At its meeting on April 5, 2022, the Commission adopted the proposed rules and program guides as recommended by the Advisory Committee.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 16 TAC §84.3

##### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



## SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

### 16 TAC §§84.500, 84.502 - 84.504, 84.507

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 94. PROPERTY TAX PROFESSIONALS

### 16 TAC §94.60

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 94, §94.60, regarding the Property Tax Professionals program, without changes to the proposed text as published in the December 10, 2021, issue of the *Texas Register* (46 TexReg 8298). These rules will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rule under 16 TAC, Chapter 94 implements Texas Occupations Code, Chapter 51, General Provisions Related to Licensing, and Chapter 1151, Property Tax Professionals.

The adopted rule is necessary to implement Senate Bill (SB) 916, 87th Legislature, Regular Session (2021). The aforementioned legislation requires the Department to provide an electronic link on its website that connects a user to the findings from the comptroller's biennial review of the appraisal district during a time that the selected registered professional appraiser was serving as the chief appraiser for that district, as well as each property value study used by the comptroller in each review. The availability of such centralized information referencing the selected appraiser's time as chief appraiser for a district will assist the board of directors of an appraisal district in its evaluation for the appointment of a new chief appraiser and provide additional transparency to the public regarding a chief appraiser's past and present work performance.

#### SECTION-BY-SECTION SUMMARY

The adopted rule adds new §94.60, Information on Appraisal District Reviews, which implements SB 916, and will require TDLR to provide an electronic link on its website for each registered professional appraiser that links to the comptroller's review of the appraisal district at the time the selected appraiser was serving as the chief appraiser of that district, as well as each property value study used by the comptroller in each review.

#### COMMISSION ACTION

At its meeting on April 5, 2022, the Commission adopted the proposed rules as recommended by the Department.

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 10, 2021, issue of the *Texas Register* (46 TexReg 8298). The deadline for public comments was January 10, 2022. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comment is summarized below.

Comment - One commenter inquired as to what changes were made during this rulemaking to the proposed rules.

*Department Response* - The specific changes to the proposed rules are identified in the Section-by-Section summary. The Department made no changes in response to this comment.

#### STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1151, which authorize the Commission to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

### 16 TAC §§114.20 - 114.22, 114.27, 114.29, 114.40, 114.50, 114.75, 114.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 114, §§114.20-114.22, 114.27, 114.29, 114.40, 114.50, 114.75, and 114.80, regarding the Orthotists and Prosthetists Program, without changes to the proposed text as published in the November 5, 2021, issue of



the *Texas Register* (46 TexReg 7485). These rules will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 114 implement Texas Occupations Code, Chapter 605, Orthotists and Prosthetists.

The adopted rules implement changes identified by the Texas Department of Licensing and Regulation (Department) as a result of the four-year rule review process conducted under Texas Government Code §2001.39. The adopted rules are necessary to update rule provisions to reflect current Department procedures, amend outdated rule language, and eliminate unnecessary fees.

#### SECTION-BY-SECTION SUMMARY

The adopted rules amend §114.20, Applications, by permitting submission of official transcripts and references in a manner prescribed by the Department, eliminating the requirement to submit proof of completion of the jurisprudence examination at every other renewal application, and removing outdated language regarding the disapproval of applications.

The adopted rules amend §114.21, Licenses and Licensing Procedures, by eliminating a reference to the jurisprudence examination and clarifying the language requiring display of a license at the primary location of practice or place of employment.

The adopted rules amend §114.22, Examination for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist, by inserting a reference to initial applicants completing the jurisprudence examination, removing outdated language related to the administration of the examination by the Department, and making clarifying changes to the section to reflect the current practices of the Department and its designee regarding the examination.

The adopted rules amend §114.27, Assistant License, to revert language to the previous requirements of the section before erroneous language was inserted due to a clerical error. The language in the adopted rules is modeled on the text of the section as it existed in the version of the rule adopted to be effective October 1, 2016 (41 TexReg 4467), with minor changes to clarify the scope of supervision for assistants. The current rule text contains errors in subsection (c) due to a mistaken submission by Department staff in the version of the rule effective September 1, 2018 (43 TexReg 5362).

The adopted rules amend §114.29, Accreditation of Facilities, to simplify submission requirements for changing a practitioner-in-charge or safety manager, and to eliminate the reference to submitting a fee for changing either of those positions.

The adopted rules amend §114.40, Renewal, by removing the requirement to submit proof of completing the jurisprudence examination and changing the process for voluntary charity care license holders by eliminating the delay until the next renewal period if they wish to reinstate their license type to active status.

The adopted rules amend §114.50, Continuing Education, by clarifying that live or pre-recorded instructor-directed activities may be offered in-person or using telecommunications or information technology that permits two-way interaction between the instructor and the attendee, classifying interactive computer-generated learning activities as a self-study activity, and making clarifying edits to the section based on these changes.

The adopted rules amend §114.75, Scope and Conditions of Practice, by adding telehealth to the scope of practice in a facil-

ity, in addition to the existing offsite practice authorized under the section, limiting the offsite or telehealth practice to the licensees' scope of practice, and removing a reference to "registrants."

The adopted rules amend §114.80, Fees, to eliminate the fee for changing a practitioner-in-charge or safety manager, and to eliminate the fees for renewal of a voluntary charity care license type.

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the November 5, 2021, issue of the *Texas Register* (46 TexReg 7485). The deadline for public comments was December 6, 2021. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

#### ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Orthotists and Prosthetists Advisory Board met on February 28, 2022, to discuss the proposed rules. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on April 5, 2022, the Commission adopted the proposed rules as recommended by the Advisory Board.

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 605, which authorize the Commission to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the adopted rules.

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 April 11, 2022.

TRD-202201364

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: May 1, 2022

Proposal publication date: November 5, 2021

For further information, please call: (512) 463-3671



## CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 130, Subchapter B, §130.27, and adopts a new rule at Subchapter G, §130.75, regarding the Podiatry program, without changes to the proposed text as published in the January 28, 2022, issue of the *Texas Register* (47 TexReg 234). These rules will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 130 implement Texas Occupations Code Chapter 202, Podiatrists.

The adopted rules implement certain podiatry-specific provisions required by Texas Occupations Code §51.2032. The adopted rules are necessary to relocate these provisions from their existing locations to the chapter of the Texas Department of Licensing and Regulation (Department) rules specifically regulating podiatry. This rulemaking is accompanied by another rulemaking related to 16 TAC Chapter 100, regarding General Provisions for Health-Related Programs, and the reorganization of that chapter has resulted in the need for the adopted rules.

#### SECTION-BY-SECTION SUMMARY

The adopted rules amend §130.27, Meetings. The adopted rules amend the title of the rule to "Advisory Board Meetings and Duties of Department." The adopted rules duplicate the provisions of existing 16 TAC §100.20, Providing Information to Advisory Boards for Certain Health-Related Programs, with minor changes to the text making it podiatry-specific. The adopted rules also relocate 16 TAC §100.31, Rules Regarding the Podiatric Medicine Program, and §100.50, Continuing Education Procedures for the Podiatric Medicine Program, to this rule section, creating new subsections and re-lettering the existing rule text accordingly. The Department's rules in Chapter 100 are being amended to remove podiatry references and §100.31 and §100.50 are being repealed in a concurrent rulemaking.

The adopted rules adopt new §130.75, Establishment of Enforcement Procedures. This new rule creates a podiatry-specific version of the text of existing 16 TAC §100.40, Enforcement Procedures for Certain Health-Related Programs.

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 28, 2022, issue of the *Texas Register* (47 TexReg 234). The deadline for public comments was February 28, 2022. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

The Department received podiatry-related comments on the accompanying 16 TAC Chapter 100 rulemaking proposal, and those comments are addressed in the adoption materials for that rulemaking. Those comments request changes to rule sections outside the scope of this rulemaking.

#### COMMISSION ACTION

At its meeting on April 5, 2022, the Commission adopted the proposed rules as recommended by the Department.

### SUBCHAPTER B. ADVISORY BOARD

#### 16 TAC §130.27

##### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the adopted rules.

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 April 11, 2022.

TRD-202201365

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: May 1, 2022

Proposal publication date: January 28, 2022

For further information, please call: (512) 463-3671



### SUBCHAPTER G. ENFORCEMENT

#### 16 TAC §130.75

##### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the adopted rules.

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 April 11, 2022.

TRD-202201366

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: May 1, 2022

Proposal publication date: January 28, 2022

For further information, please call: (512) 463-3671



### TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 61. SCHOOL DISTRICTS

#### SUBCHAPTER AA. COMMISSIONER'S

##### RULES ON SCHOOL FINANCE

#### 19 TAC §61.1009

The Texas Education Agency adopts an amendment to §61.1009, concerning the fast growth allotment. The amendment is adopted without changes to the proposed text as published in the December 31, 2021 issue of the *Texas Register* (46 TexReg 9153) and will not be republished. The adopted amendment will implement changes to Texas Education Code (TEC), Chapter 48, by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: TEC, §48.111, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, establishes categories of tiered funding weights, as defined by the commissioner of education, for each student enrolled in a district eligible for an annual allotment. The fast growth allotment to which a school district may be entitled is equal to the basic allotment multiplied by the applicable funding weight for each enrolled student equal to a difference greater than zero that results from subtracting 250 from the difference between the number of students enrolled in the district during the school year immediately preceding the current school year and the number of students enrolled in the district during the school year six years preceding the current school year.

The adopted amendment will reflect the new calculation and establish specific weights for each growth category beginning with the 2021-2022 school year and continuing through the subsequent school years. The total statewide allocations for the 2021-2022, 2022-2023, and 2023-2024 school years are subject to limitations.

The adopted amendment to §61.1009(c) will implement the amended mathematical calculation of the allotment by redefining the student enrollment growth value to cumulative enrollment growth over 250 to derive the percentile of growth for each district, while freezing the hold harmless calculations for the 2021-2022 school year and assigning different funding weights per enrolled student in the top, middle, and bottom tier of districts.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 31, 2021, and ended January 31, 2022. Following is a summary of the public comment received and the agency response.

Comment: An individual asked why open-enrollment charter schools are excluded from eligibility.

Response: The agency provides the following clarification. Per TEC, §12.106(a), an open-enrollment charter school is not entitled to receive funding under TEC, §48.111, Fast Growth Allotment.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §48.111, as amended by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which provides a fast growth allotment to school districts whose total enrollment growth, based on a prior six-year period, exceeds 250; and TEC, §12.106(a), which excludes open-enrollment charter schools from receiving the fast growth allotment.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.111, as amended by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, and §12.106(a).

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 April 13, 2022.  
TRD-202201390

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Effective date: May 3, 2022  
Proposal publication date: December 31, 2021  
For further information, please call: (512) 475-1497

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 357. REGIONAL WATER PLANNING**

The Texas Water Development Board ("TWDB" or "board") adopts amendments to 31 Administrative Code (TAC) §§357.10 - 357.12, concerning General Information; §357.21 and §357.22, concerning Guidance Principles and Notice Requirements; §§357.31 - 357.34, concerning Planning Activities for Needs Analysis and Strategy Recommendations; §357.42, concerning Impacts, Drought Response, Policy Recommendations, and Implementation; §357.50 and §357.51, concerning Adoption, Submittal, and Amendments to Regional Water Plans; and §357.62 concerning Consistency and Conflicts In Regional Water Plans as well as the repeals of §357.44 and §357.46, concerning Impacts, Drought Response, Policy Recommendations, and Implementation. The repeals of §357.44 and §357.46 as well as the amendments to §357.62 are adopted without changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9194); these rules will not be republished. The remaining rules are adopted with changes to the proposed text as published in the same issue of the *Texas Register* and will be republished.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.**

The purpose of the amendments to 31 TAC Chapter 357 is to reduce certain unessential reporting requirements; address stakeholder concerns raised during the previous planning cycle and preliminary input period; and clarify rule language by removing outdated references to past planning cycles and revising references to updated public notice rules in Section §357.21. The purpose of the adopted repeals to 31 TAC §357.44 and §357.46 is to implement legislative changes from House Bill (HB) 1905, 87th Legislative Session.

**SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.**

*Subchapter A. General Information.*

*Section 357.10. Definitions and Acronyms.*

Section 357.10(18) is revised to reference the appropriate public notice rule in §357.21.

Section 357.10(43)(F) is revised to clarify the livestock water user group terminology.

*Section 357.11. Designations.*

Section 357.11(k)(5) is revised to remove a reference to past planning cycles.

**Section 357.12. General Regional Water Planning Group Responsibilities and Procedures.**

Section 357.12(a)(1) is revised to add a new requirement for regional water planning groups (RWPGs) to discuss their process for conducting interregional coordination at the pre-planning public input meeting.

Section 357.12(b) is revised to reference the appropriate public notice rule in §357.21 and add clarity to the rule.

Section 357.12(c) is revised to reference the appropriate public notice rule in §357.21.

Section 357.12(c)(7) is revised to remove an outdated reference and clarify that if the RWPG does not determine that any water management strategies (WMSs) or water management strategy projects (WMSPs) are infeasible in their previously adopted regional water plan (RWP), the Technical Memorandum shall include a statement that no infeasible WMSs or WMSPs were identified by the RWPG.

New §357.12(c)(8) is added to require that the Technical Memorandum include a summary of the RWPG's interregional coordination efforts to date regarding plan development efforts. Interregional coordination efforts may include but are not limited to, the region's use of regional liaisons, forming committees to meet with neighboring regions or their representatives, and authorizing RWPG administrators or planning group consultants to meet with neighboring regions or their representatives.

Previous §357.12(c)(8) is renumbered to §357.12(c)(9).

Section 357.12(d) is revised to reference the appropriate public notice rule in §357.21.

Section 357.12(g) is revised to reference the appropriate public notice rule in §357.21.

Section 357.12(h) is revised to reference the appropriate public notice rule in §357.21.

**Subchapter B. Guidance Principles and Notice Requirements.**

**Section 357.21. Notice and Public Participation.**

New §357.21(g)(1)(I) is added to specify that adoption of errata to RWPs is subject to a minimum seven-day public notice period. The rule also specifies the minimum time for posting meeting materials as three days prior to and seven days following the public meeting.

Previous §357.21(g)(1)(I) and (J) are renumbered to (J) and (K), respectively.

**Section 357.22. General Considerations for Development of Regional Water Plans.**

Section 357.22(b) is revised to remove a reference to §357.44 and revise the total number of RWP chapters to 10. Section 357.44 is removed to implement the repeal of Texas Water Code (TWC) §15.435(g)(2) and §16.053(q) made by HB 1905, 87th Legislative Session (relating to Infrastructure Financing Surveys).

**Subchapter C. Planning Activities for Needs Analysis and Strategy Recommendations.**

**Section 357.31. Projected Population and Water Demands.**

Section 357.31(e)(2) is revised to reference the appropriate public notice rule in §357.21.

**Section 357.32. Water Supply Analysis.**

Section 357.32(a)(2) is revised to provide clarity to the rule.

Section 357.32(c)(1) is revised to provide reference to the definition of Firm Yield in §357.10 in order to clarify that evaluations of existing stored water available during Drought of Record conditions are to use anticipated sedimentation rates and assume that all senior water rights will be totally utilized, and all applicable permit conditions are met.

Section 357.32(e) is removed since it is duplicative of §357.32(a)(2).

Previous subsections (f) and (g) are renumbered to (e) and (f), respectively.

**Section 357.33. Needs Analysis: Comparison of Water Supplies and Demands.**

Section 357.33(b) is revised to remove the description of how results shall be reported for WUGs and MWPs. Reporting requirements for WUGs and MWPs are clarified and consolidated in new §357.33(c).

Previous §357.33(c) is removed because it is duplicative of §357.40(a).

Previous subsections (d) and (e) are renumbered to (c) and (d), respectively.

**Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.**

Section 357.34(b) is revised to clarify rule language.

Section 357.34(d) is revised to remove the reference to RWPG project prioritization. The requirement for RWPGs to prioritize projects is removed by HB 1905, 87th Legislative Session.

Section §357.34(e)(3)(A) is revised to provide specific allowances for costs associated with distribution of water within a water user group after treatment for direct reuse and conservation WMSs. These specific, limited allowances will be detailed in the regional water planning grant contract technical guidance (Contract Exhibit C).

Section 357.34(e)(9) is removed because it is duplicative of §357.34(i)(2)(D), which requires RWPGs to consider information from water loss audits in their development of WMSs.

Section 357.34(e)(10) is renumbered to (9).

Section 357.34(j) will not change as a result of this rulemaking.

**Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation**

**Section 357.42. Drought Response Information, Activities, and Recommendations.**

Section 357.42(c) is revised to align the rule more closely with statute, TWC §16.053(e)(3)(B)-(C), which requires RWPGs to identify factors specific to each source of water supply to be considered in determining whether to initiate a drought response and actions to be taken as part of the response;

Section 357.42(e) is revised to substitute the word "may" for the word "shall" to align the rule more closely with statute and remove nonstatutorily required reporting.

Section 357.42(i) is revised to substitute the word "may" for the word "shall" to align the rule more closely with statute and remove non-statutorily required reporting.

Section 357.42(j) will not change as a result of this rulemaking.

*Section 357.44. Infrastructure Financing Analysis.*

Section 357.44 is removed to implement the repeal of TWC §16.053(q) and the amendment of TWC §15.435(g) made by HB 1905, 87th Legislative Session (relating to Infrastructure Financing Surveys). The revision removes the requirement for RWPGs to perform an infrastructure financing analysis.

*Section 357.46. Prioritization of Projects by Regional Water Planning Groups.*

Section 357.46 is removed to implement the repeal of TWC §15.436 made by HB 1905, 87th Legislative Session (related to Prioritization of Project by RWPGs). The revision removes the requirement for RWPGs to prioritize recommended WMSPs and removes the requirement for RWPGs to submit the prioritization with an adopted RWP.

*Section 357.50. Adoption, Submittal, and Approval of Regional Water Plans.*

Section 357.50(c) is revised to reference the appropriate public notice rule in Section §357.21.

Section 357.50(f)(2) refers to outdated written comment requirements and is removed. The written comment period requirements for the IPP are outlined in §357.21(h)(3).

Previous §357.50(f)(3), (4), and (5) renumbered to (2), (3), and (4), respectively.

Renumbered §357.50(f)(2) is revised to clarify rule language and reference the appropriate public notice rule in §357.21.

New §357.50(g)(1)(C) is added to require documentation of the RWPG's interregional coordination efforts regarding plan development efforts in the Initially Prepared Plan (IPP) and adopted RWPs. Interregional coordination efforts may include but are not limited to, the region's use of regional liaisons, forming committees to meet with neighboring regions or their representatives, and authorizing RWPG administrators or planning group consultants to meet with neighboring regions or their representatives.

Previous §357.50(g)(1)(C) is renumbered to (D) and revised to specify that a copy of the EA's comments on the IPP be included in the RWP.

Section 357.50(g)(2)(B) is revised to clarify rule language on data requirements.

*Section §357.51. Amendments to Regional Water Plans.*

Section 357.51(b) is revised to reference the appropriate public notice rule in Section §357.21.

Section 357.51(b)(2) is revised to clarify rule language and reference the appropriate public notice rule in Section §357.21.

Section 357.51(b)(4) is revised to clarify rule language and reference the appropriate public notice rule in Section §357.21.

Section 357.51(c)(2)(C) is revised to allow minor RWP amendments that remove infeasible recommended WMSs or WMSPs (in accordance with §357.51(g) and Texas Water Code §16.053(h)(10)) to include an increase in or new unmet needs. This change is made in an effort to provide an efficient process, with minimum administrative burden, for the removal of infeasible WMSs or WMSPs.

Section 357.51(c)(4) is revised to specify that an adopted minor amendment to a RWP shall include responses to comments re-

ceived on the amendment. The rule is also revised to reference the appropriate public notice rule in §357.21.

Section 357.51(e) is revised to reference the appropriate public notice rule in §357.21.

Section 357.51(g) is revised to specify that RWP amendments for infeasible recommended WMSs or WMSPs shall be submitted to the Board by a date established by the EA and to require that these amendments detail any changes to unmet needs.

New §357.51(i) is added to allow RWPGs to adopt an errata to a final RWP to correct minor, non-substantive errors identified after adoption of the final RWP but prior to adoption of the corresponding State Water Plan. Examples of minor, non-substantive errors that may be addressed in errata include corrections to typos or revisions to address inconsistencies between the RWP and the State Water Planning Database such as incorrect capital costs, online decades for WMSPs, incorrect WMSP components, or incorrect water user group and WMSP relationships. Prior to adopting errata to a final RWP, the RWPG must provide a minimum seven-day public notice in accordance with §357.21(g)(1). Once adopted, the RWPG shall submit errata containing revised pages to the final RWP and public comments received to the EA for review.

*Section 357.62. Interregional Conflicts.*

Section 357.62(b)(2) is revised to reference the appropriate public notice rule in §357.21.

**REGULATORY IMPACT ANALYSIS DETERMINATION**

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to reduce non-statutory reporting requirements, implement statutory changes, and clarify rule language.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed the standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather under the authority of Texas Water Code

§15.439 and §16.053. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to reduce non-statutory reporting requirements, implement statutory changes, and clarify rule language.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS

The following written comments were received from the Central Texas Water Coalition (CTWC), Freese and Nichols, Inc. (FNI), National Wildlife Federation (NWF), Sierra Club Lone Star Chapter, Texas 2036, and Senator Charles Perry.

##### *Comment*

Senator Charles Perry commented that feasibility of water management strategies must be at the front of all planning discussions and noted that the proposed rule changes outline ways to streamline water planning with no plan updates for a region or an easier amendment process. Senator Perry encouraged that planning groups take a close look at project feasibility when updating the regional water plans and stated that planning groups should address supply chain issues or other mitigating factors that would cause a project to not be completed in an appropriate timeframe through the proposed amendment process. Senator Perry encouraged TWDB to incorporate obtainable recommendations for regional water planning groups to meet expectations that regional water plans be realistic and include actionable items to meet the objective of water for the next 50 years.

##### *Response*

The TWDB appreciates this comment. No change has been made in response to this comment.

##### *Comment*

Sierra Club Lone Star Chapter and NWF commented that the proposed amendments did not include several clarifications for which TWDB requested preliminary input from stakeholders, including consideration of available reuse data and reuse capacity constraints, and the implementation status of drought con-

tingency measures. Sierra Club Lone Star Chapter and NWF commented that they supported these clarifications in their June 30, 2021, preliminary input letter and continue to believe that the clarifications are reasonable.

##### *Response*

The TWDB appreciates this comment. The TWDB notes that this comment is not in response to any specific proposed rule change, but rather the comment relates to preliminary stakeholder input. The TWDB has reviewed the preliminary input and will take it under advisement when updates to regional water planning guidance documents are made. No change has been made in response to this comment.

##### *Comment*

Texas 2036 provided comprehensive comments related to the creation of a water market. Texas 2036 commented that a definition for the term water market should be added to §357.10 and provided a suggested definition for the term. Additionally, Texas 2036 commented that §357.22 (relating to General Considerations for Development of Regional Water Plans) should be expanded to include the consideration of information on the effects of water markets functioning within the planning region.

Texas 2036 commented that §357.34(c)(1) should be amended to distinguish water markets from water marketing and proposed that "water marketing" in the existing rule language be revised to "water markets".

Texas 2036 commented that §357.34(e) should be amended to require that planning group evaluations of potentially feasible water management strategies include an analysis of the effects of water markets within the region.

##### *Response*

The TWDB appreciates this comment, but the creation of a water market is outside the scope of this rulemaking and well beyond its statutory authority. The TWDB takes no position of the merits of a water market. No changes have been made in response to these comments.

##### *Comment*

Texas 2036 commented that §357.22 (relating to General Considerations for Development of Regional Water Plans) should be expanded to include the consideration of extreme weather data and trends made available by the Office of the State Climatologists at Texas A&M University.

##### *Response*

The TWDB appreciates this comment, but it is outside the scope of this rulemaking. The TWDB notes that this comment is not in response to any specific proposed rule change. No change has been made in response to this comment.

##### *Comment*

Texas 2036 commented that the definition of firm yield included in §357.10(14) should be amended to include evaporative losses since both sedimentation and evaporation affect a reservoir's firm yield. Texas 2036 commented that the proposed change would ensure that the firm yield data that informs regional water supply analysis include evaporative losses. Texas 2036 commented that the proposed rule change to §357.32(c)(1) to reference the definition of firm yield in §357.10(14) also makes their proposed change to the firm yield definition more necessary.

##### *Response*

The TWDB appreciates this comment. Evaporative losses are already accounted for in firm yield calculations through the standard default criteria in the Texas Commission on Environmental Quality Water Availability Models. Planning groups have the flexibility to incorporate projected increases of evaporative losses into modeling of surface water reservoirs through the agency's hydrologic variance request process. No change has been made in response to this comment.

*Comment*

CTWC commented that it has concerns that regional water planning groups may overestimate water available in storage reservoirs by overlooking some components of water use permits that govern operations of those reservoirs. CTWC asked for confirmation that the full amount of reservoir releases, including interruptible irrigation supplies required or authorized under a reservoir's water management plan, must be assumed when determining a reservoir's firm yield, as defined by §357.10(14).

*Response*

The TWDB appreciates this comment, but it is outside the scope of this rulemaking. The TWDB notes that these comments are not in response to any specific proposed rule change, but rather the comment requests the clarification of an existing rule. RWPGs are required to evaluate reservoir firm yield to determine supplies during drought of record conditions and must account for water use permit requirements and special conditions. The TWDB encourages CTWC to continue to engage with Region K during the 2026 regional water planning process. No change has been made in response to this comment.

*Comment*

CTWC commented that regional water planning groups would benefit from additional TWDB guidance on procedural matters and asked if TWDB's assistance to the regional water planning groups may include the presence of a TWDB-provided parliamentarian at planning group meetings as well as regulatory review of regional water planning group bylaws and their interpretation and enforcement.

*Response*

The TWDB appreciates this comment. The TWDB staff strives to provide clear and adequate guidance and support to the RWPGs within its available resources. The TWDB notes that these comments are not in response to any specific proposed rule change, but rather the comment requests additional assistance from the TWDB. No change has been made in response to this comment.

*Comment*

FNI commented that it appreciates the efforts of the Interregional Planning Council and supports the proposed rule amendments regarding documentation of interregional coordination. FNI commented that the amendments promote improved documentation while allowing the planning groups the flexibility to develop their own coordination procedures.

*Response*

The TWDB appreciates this comment. No changes have been made in response to this comment.

*Comment*

FNI commented that legislative requirements for regional water planning groups to identify infeasible water management strategies present substantial challenges. FNI commented that it ap-

preciates the integration of flexibility into Chapter 357 rules to accommodate this process, specifically clarifying the ability of planning groups to note when no strategies are deemed infeasible and the ability to accommodate additional unmet needs caused by the removal of an infeasible strategy or project.

*Response*

The TWDB appreciates this comment. No changes have been made in response to this comment.

*Comment*

FNI commented that it appreciates the proposed changes regarding allowances to permit planning groups to adopt errata with minor corrections to regional water plans prior to adoption of the corresponding state water plan. FNI commented that this rule amendment allows for greater efficiency to address minor errors while maintaining transparency and public participation.

*Response*

The TWDB appreciates this comment. No changes have been made in response to this comment.

*Regarding*

Section 357.32 Water Supply Analysis.

*Comment*

CTWC commented that it supports the proposed addition to §357.32(c)(1) clarifying that firm yield referenced in the rule is defined in §357.10(14).

*Response*

The TWDB appreciates this comment. No changes have been made in response to this comment.

*Regarding*

Section 357.34 Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

*Comment*

FNI commented that it supports the proposed changes regarding allowances for costs associated with distribution of water within a water user group after treatment for direct reuse and conservation WMSs.

*Response*

The TWDB appreciates this comment. No changes have been made in response to this comment.

*Comment*

Sierra Club Lone Star Chapter and NWF commented that the reasoning for making the inclusion of model water conservation plans in the regional water plan optional in the revision to §357.34(j) isn't warranted and the requirement should not be made optional. Sierra Club Lone Star Chapter and NWF commented that inclusion of model water conservation plans enables the public to better evaluate water conservation recommendations in the regional water plan.

*Response*

The TWDB appreciates this comment. The TWDB has considered this comment and will continue to require regional water plans to include model water conservation plans. TWDB's regional water planning contract guidance, however, will clarify that

regional water planning groups may use model water conservation plans developed by the Texas Commission on Environmental Quality for this purpose. As a result of this comment, the proposed change to §357.34(j) will not be implemented and this rule will, therefore, remain as it was prior to this rulemaking.

*Regarding*

Section 357.42 Drought Response Information, Activities, and Recommendations.

*Comment*

FNI commented that it supports the proposed changes to §357.42(c) which clarifies that planning groups identify existing drought response triggers and actions rather than develop these parameters. FNI commented that the revised language removes a potential conflict between planning group responsibilities and local planning and allows the regional water plans to better reflect local planning efforts.

*Response*

The TWDB appreciates this comment. No changes have been made in response to this comment.

*Comment*

Sierra Club Lone Star Chapter and NWF commented that the reasoning for making it optional for planning groups to provide general descriptions of local Drought Contingency Plans that involve making emergency connections between water systems or wholesale water provider systems isn't warranted in the revision to §357.42(e). Sierra Club Lone Star Chapter and NWF commented that this information seems useful to the public.

*Response*

The TWDB appreciates this comment. Regional water planning groups are required to collect and report information on existing and potential emergency interconnects. These existing and potential emergency connections must be provided in the regional water plan in list form. No changes have been made in response to this comment.

*Comment*

Sierra Club Lone Star Chapter and NWF commented that they disagree with the proposed revision to §357.42(j) regarding development of region-specific model Drought Contingency Plans. Sierra Club Lone Star Chapter and NWF commented that municipal water user groups benefit from having region-specific model plans and that model Drought Contingency Plans developed by TCEQ do not necessarily serve each region well, given the diversity of the state.

*Response*

The TWDB appreciates this comment. The TWDB has considered this comment and will continue to require regional water plans to include model drought contingency plans. TWDB's regional water planning contract guidance, however, will clarify that regional water planning groups may use model drought contingency plans developed by the Texas Commission on Environmental Quality for this purpose. As a result of this comment, the proposed change to §357.42(j) will not be implemented and this rule will, therefore, remain as it was prior to this rulemaking.

*Regarding*

Section 357.44 Infrastructure Financing Analysis.

*Comment*

FNI commented that it supports the proposed changes regarding removal of infrastructure finance analysis requirements. FNI commented that these changes reduce redundancy while maintaining plan functionality.

*Response*

The TWDB appreciates this comment. No changes have been made in response to this comment.

*Regarding*

Section 357.46 Prioritization of Projects by Regional Water Planning Groups.

*Comment*

FNI commented that it supports the proposed changes regarding removal of project prioritization requirements. FNI commented that the removal of this responsibility from the planning groups is a reasonable and timely modification to the planning process.

*Response*

The TWDB appreciates this comment. No changes have been made in response to this comment.

*Regarding*

Section 357.51 Amendments to Regional Water Plans.

*Comment*

Texas 2036 commented that the proposed amendments to §357.51(b)(2) to reduce the window major regional water plan amendments are available for public review should be kept intact to ensure that the major amendment publication window corresponds with the public comment window described in §357.21(g)(3).

*Response*

The TWDB appreciates this comment. The public notice revisions proposed in §357.51(b)(2) are to correct an error and align the section the public notice requirements in Section §357.21. No change has been made in response to this comment.

## SUBCHAPTER A. GENERAL INFORMATION

### 31 TAC §§357.10 - 357.12

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code §16.053 and §15.439 are affected by this rulemaking.

*§357.10. Definitions and Acronyms.*

The following words, used in this chapter, have the following meanings.

(1) Agricultural Water Conservation--Defined in §363.1302 of this title (relating to Definition of Terms).



(2) Alternative Water Management Strategy--A fully evaluated Water Management Strategy that may be substituted into a Regional Water Plan in the event that a recommended Water Management Strategy is no longer recommended.

(3) Availability--Maximum amount of raw water that could be produced by a source during a repeat of the Drought of Record, regardless of whether the supply is physically connected to or legally accessible by Water User Groups.

(4) Board--The Texas Water Development Board.

(5) Collective Reporting Unit--A grouping of utilities located in the Regional Water Planning Area. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common Wholesale Water Providers, having common sources, or other appropriate associations.

(6) Commission--The Texas Commission on Environmental Quality.

(7) County-Other--An aggregation of utilities and individual water users within a county and not included in paragraph (43)(A) - (D) of this section.

(8) Drought Contingency Plan--A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders). The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.

(9) Drought Management Measures--Demand management activities to be implemented during drought that may be evaluated and included as Water Management Strategies.

(10) Drought Management Water Management Strategy--A drought management measure or measures evaluated and/or recommended in a State or Regional Water Plan that quantifies temporary reductions in demand during drought conditions.

(11) Drought of Record--The period of time when historical records indicate that natural hydrological conditions would have provided the least amount of water supply.

(12) Executive Administrator (EA)--The Executive Administrator of the Board or a designated representative.

(13) Existing Water Supply--Maximum amount of water that is physically and legally accessible from existing sources for immediate use by a Water User Group under a repeat of Drought of Record conditions.

(14) Firm Yield--Maximum water volume a reservoir can provide each year under a repeat of the Drought of Record using anticipated sedimentation rates and assuming that all senior water rights will be totally utilized and all applicable permit conditions met.

(15) Interbasin Transfer of Surface Water--Defined and governed in Texas Water Code §11.085 (relating to Interbasin Transfers) as the diverting of any state water from a river basin and transfer of that water to any other river basin.

(16) Interregional Conflict--An interregional conflict exists when:

(A) more than one Regional Water Plan includes the same source of water supply for identified and quantified recommended Water Management Strategies and there is insufficient water available to implement such Water Management Strategies; or

(B) in the instance of a recommended Water Management Strategy proposed to be supplied from a different Regional Water Planning Area, the Regional Water Planning Group with the location of the strategy has studied the impacts of the recommended Water Management Strategy on its economic, agricultural, and natural resources, and demonstrates to the Board that there is a potential for a substantial adverse effect on the region as a result of those impacts.

(17) Intraregional Conflict--A conflict between two or more identified, quantified, and recommended Water Management Strategies in the same Initially Prepared Plan that rely upon the same water source, so that there is not sufficient water available to fully implement all Water Management Strategies and thereby creating an over-allocation of that source.

(18) Initially Prepared Plan (IPP)--Draft Regional Water Plan that is presented at a public hearing in accordance with §357.21(h) of this title (relating to Notice and Public Participation) and submitted for Board review and comment.

(19) Major Water Provider (MWP)--A Water User Group or a Wholesale Water Provider of particular significance to the region's water supply as determined by the Regional Water Planning Group. This may include public or private entities that provide water for any water use category.

(20) Modeled Available Groundwater (MAG) Peak Factor--A percentage (e.g., greater than 100 percent) that is applied to a modeled available groundwater value reflecting the annual groundwater availability that, for planning purposes, shall be considered temporarily available for pumping consistent with desired future conditions. The approval of a MAG Peak Factor is not intended as a limit to permits or as guaranteed approval or pre-approval of any future permit application.

(21) Planning Decades--Temporal snapshots of conditions anticipated to occur and presented at even intervals over the planning horizon used to present simultaneous demands, supplies, needs, and strategy volume data. A Water Management Strategy that is shown as providing a supply in the 2040 decade, for example, is assumed to come online in or prior to the year 2040.

(22) Political Subdivision--City, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other Political Subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

(23) Regional Water Plan (RWP)--The plan adopted or amended by a Regional Water Planning Group pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and this chapter.

(24) Regional Water Planning Area (RWPA)--Area designated pursuant to Texas Water Code §16.053.

(25) Regional Water Planning Gallons Per Capita Per Day--For Regional Water Planning purposes, Gallons Per Capita Per Day is the annual volume of water pumped, diverted, or purchased minus the volume exported (sold) to other water systems or large industrial facilities divided by 365 and divided by the permanent resident population of the Municipal Water User Group in the regional water planning process. Coastal saline and reused/recycled water is not included in this volume.

(26) Regional Water Planning Group (RWPG)--Group designated pursuant to Texas Water Code §16.053.

(27) RWPG-Estimated Groundwater Availability--The groundwater Availability used for planning purposes as determined by RWPGs to which §357.32(d)(2) of this title (relating to Water Supply Analysis) is applicable or where no desired future condition has been adopted.

(28) Retail Public Utility--Defined in Texas Water Code §13.002 (relating to Water Rates and Services) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, Political Subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."

(29) Reuse--Defined in §363.1302 of this title (relating to Definition of Terms).

(30) State Drought Preparedness Plan--A plan, separate from the State Water Plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).

(31) State Drought Response Plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).

(32) State Water Plan--The most recent state water plan adopted by the Board under the Texas Water Code §16.051 (relating to State Water Plan).

(33) State Water Planning Database--Database maintained by TWDB that stores data related to population and Water Demand projections, water Availability, Existing Water Supplies, Water Management Strategy supplies, and Water Management Strategy Projects. It is used to collect, analyze, and disseminate regional and statewide water planning data.

(34) Technical Memorandum--Documentation of the RWPG's preliminary analysis of Water Demand projections, water Availability, Existing Water Supplies, and Water Needs and declaration of the RWPG's intent of whether or not to pursue simplified planning.

(35) Unmet Water Need--The portion of an identified Water Need that is not met by recommended Water Management Strategies.

(36) Water Conservation Measures--Practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water that may be presented as Water Management Strategies, so that a water supply is made available for future or alternative uses. For planning purposes, Water Conservation Measures do not include reservoirs, aquifer storage and recovery, or other types of projects that develop new water supplies.

(37) Water Conservation Plan--The most current plan required by Texas Water Code §11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate 1,000 acre-feet per year or more for municipal, industrial, and other non-irrigation uses and for those who are authorized to appropriate 10,000 acre-feet per year or more for irrigation, and the most current plan required by Texas Water Code §13.146 from a Retail Public Utility that provides potable water service to 3,300 or more connections. These plans must include specific, quantified 5-year and 10-year targets for water savings.

(38) Water Conservation Strategy--A Water Management Strategy with quantified volumes of water associated with Water Conservation Measures.

(39) Water Demand--Volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group during drought conditions.

(40) Water Management Strategy (WMS)--A plan to meet a need for additional water by a discrete Water User Group, which can mean increasing the total water supply or maximizing an existing supply, including through reducing demands. A Water Management Strategy may or may not require associated Water Management Strategy Projects to be implemented.

(41) Water Management Strategy Project (WMSP)--Water project that has a non-zero capital costs and that when implemented, would develop, deliver, or treat additional water supply volumes, or conserve water for Water User Groups or Wholesale Water Providers. One WMSP may be associated with multiple WMSs.

(42) Water Need--A potential water supply shortage based on the difference between projected Water Demands and Existing Water Supplies.

(43) Water User Group (WUG)--Identified user or group of users for which Water Demands and Existing Water Supplies have been identified and analyzed and plans developed to meet Water Needs. These include:

(A) Privately-owned utilities that provide an average of more than 100 acre-feet per year for municipal use for all owned water systems;

(B) Water systems serving institutions or facilities owned by the state or federal government that provide more than 100 acre-feet per year for municipal use;

(C) All other Retail Public Utilities not covered in subparagraphs (A) and (B) of this paragraph that provide more than 100 acre-feet per year for municipal use;

(D) Collective Reporting Units, or groups of Retail Public Utilities that have a common association and are requested for inclusion by the RWPG;

(E) Municipal and domestic water use, referred to as County-Other, not included in subparagraphs (A) - (D) of this paragraph; and

(F) Non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and livestock for each county or portion of a county in an RWPA.

(44) Wholesale Water Provider (WWP)--Any person or entity, including river authorities and irrigation districts, that delivers or sells water wholesale (treated or raw) to WUGs or other WWPs or that the RWPG expects or recommends to deliver or sell water wholesale to WUGs or other WWPs during the period covered by the plan. The RWPGs shall identify the WWPs within each region to be evaluated for plan development.

#### §357.11. Designations.

(a) The Board shall review and update the designations of RW-PAs as necessary but at least every five years, on its own initiative or upon recommendation of the EA. The Board shall provide 30 days notice of its intent to amend the designations of RW-PAs by publication of the proposed change in the Texas Register and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RW-PAs proposed to be impacted, to each water district or river authority

located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RWPA proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of an RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPs shall be developed, taking into consideration factors such as:

- (1) River basin and aquifer delineations;
- (2) Water utility development patterns;
- (3) Socioeconomic characteristics;
- (4) Existing RWPA's;
- (5) Political Subdivision boundaries;
- (6) Public comment; and
- (7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the EA shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RWPG shall at a minimum address the following elements:

- (1) definition of a quorum necessary to conduct business;
- (2) method to be used to approve items of business including adoption of RWPs or amendments thereto;
- (3) methods to be used to name additional members;
- (4) terms and conditions of membership;
- (5) methods to record minutes and where minutes will be archived as part of the public record; and
- (6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one representative of each of the following interest categories as voting members of the RWPG. However, if an RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 500 employees or less than \$10 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;

(9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority;

(10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

(11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within an RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA;

(5) Staff member of the Texas Department of Agriculture designated by its commissioner; and

(6) Staff member of the State Soil and Water Conservation Board designated by its executive director.

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in an RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding Drought Management Measures and water conservation practices.

(k) The Board shall appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council will be subject to the following provisions:

(1) The Interregional Planning Council consists of one voting member from each RWPG, as appointed by the Board.

(2) Upon request by the EA, each RWPG shall submit at least one nomination for appointment, including a designated alternate for each nomination.

(3) Interregional Planning Council members will serve until adoption of the State Water Plan.

(4) The Interregional Planning Council, during each planning cycle to develop the State Water Plan, shall hold at least one public meeting and deliver a report to the Board. The report format may be determined by the Council. The report at a minimum shall include a summary of the dates the Council convened, the actions taken, minutes of the meetings, and any recommendations for the Board's consideration, based on the Council's work. Meeting frequency, location, and additional report content shall be determined by the Council.

(5) The Council's report shall be delivered to the Board no later than one year prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.

#### *§357.12. General Regional Water Planning Group Responsibilities and Procedures.*

(a) Prior to the preparation for the RWPs, in accordance with the public participation requirements in §357.21 of this title (relating to Notice and Public Participation), the RWPGs shall:

(1) hold at least one public meeting at a central location readily accessible to the public within the regional water planning area to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the next regional or state water plan and to discuss the region's process for conducting interregional coordination;

(2) prepare a scope of work that includes a detailed description of tasks to be performed, identifies responsible parties for task exe-

cution, a task schedule, task and expense budgets, and describes interim products, draft reports, and final reports for the planning process;

(3) approve any amendments to the scope of work only in an open meeting of the RWPG where notice of the proposed action was provided in accordance with §357.21 of this title; and

(4) designate a Political Subdivision as a representative of the RWPG eligible to apply for financial assistance for scope of work and RWP development pursuant to Chapter 355, Subchapter C of this title (relating to Regional Water Planning Grants).

(b) In accordance with the requirements of §357.21(g)(2) of this title, an RWPG shall hold a public meeting to determine the process for identifying potentially feasible WMSs; the process shall be documented and shall include input received at the public meeting; after reviewing the potentially feasible strategies using the documented process, then the RWPG shall list all possible WMSs that are potentially feasible for meeting a Water Need in the region. The public meeting shall also include a presentation of the results of the analysis of infeasible WMSs or WMSPs, as defined by Texas Water Code §16.053(h)(10), included in the most recently adopted RWP. Infeasible WMSs or WMSPs shall be identified based on project sponsor provided information or local knowledge, as acquired through plan development activities such as surveys, and as determined based on implementation schedules consistent with implementation by the project sponsors. The group shall provide notice to all associated project sponsors and amend its adopted RWP as appropriate based upon the analysis.

(c) The RWPGs shall approve and submit a Technical Memorandum to the EA after notice pursuant to §357.21(g)(2) of this title. The Technical Memorandum shall include:

(1) The most recent population and Water Demand projections adopted by the Board;

(2) Updated source water Availability utilized in the RWPA, as entered into the State Water Planning Database;

(3) Updated Existing Water Supplies, as entered into the State Water Planning Database;

(4) Identified Water Needs and surpluses;

(5) The documented process used by the RWPG to identify potentially feasible WMSs;

(6) The potentially feasible WMSs identified as of the date of submittal of the Technical Memorandum to the EA, if any;

(7) A listing of the infeasible WMSs and WMSPs, as determined by the RWPG pursuant to TWC §16.053(h)(10) and subsection (b) of this section, or a statement that no infeasible WMSs or WMSPs were identified by the RWPG;

(8) A summary of the RWPG's interregional coordination efforts to date; and

(9) During each off-census RWP development, the RWPG's declaration of intent to pursue simplified planning for that planning cycle. If the RWPG intends to pursue simplified planning, the RWPG shall document the process to authorize and initiate subsection (g) of this section.

(d) The EA shall evaluate the Technical Memorandum and any declaration of intent to pursue simplified planning, if applicable, and issue written approval prior to implementation of simplified planning by the RWPG. If an RWPG has not declared to pursue simplified planning in their Technical Memorandum, they may proceed without any additional approvals to develop their IPP. If the RWPG chooses to rescind their decision to pursue simplified planning, they must do so prior to

executing a contract scope of work and budget amendment with the TWDB. The RWPG must discuss and act on the decision at a public meeting posted under notice requirements of §357.21(g)(1) of this title.

(e) If applicable, and approved by the EA, an RWPG may implement simplified planning in off-census planning cycles in accordance with guidance to be provided by the EA. An RWPG may only pursue simplified planning if:

(1) the RWPG determines in its analysis of Water Needs that it has sufficient Existing Water Supplies in the RWPA to meet all Water Needs for the 50-year planning period while identifying Existing Water Supplies that are available for voluntary redistribution in the RWPA or to other RWPAs; or

(2) an RWPG determines, including based on its analysis of source water Availability, that there are no significant changes, as determined by the RWPG, to water Availability, Existing Water Supplies, or Water Demands in the RWPA. A determination that there have been no significant changes may not be based solely on an aggregated, region-wide basis without consideration of sub-regional changes.

(f) If an RWPG elects to pursue simplified planning, it must:

(1) Complete the Technical Memorandum in subsection (c) of this section and, based upon the analysis, determine and document whether significant changes have resulted from the most recently adopted RWP;

(2) Meet new statutory or other planning requirements that come into effect during the most recent planning cycle;

(3) where appropriate, adopt previous RWP or State Water Plan information, updated as necessary, as the IPP and RWP, in accordance with guidance to be provided by the EA; and

(4) conduct other activities upon approval of the EA necessary to complete an RWP that meets rule and statute requirements, including that no water supply sources to the RWPA be over-allocated.

(g) If an RWPG declares intention to pursue simplified planning with the submittal of its Technical Memorandum, in accordance with subsection (c) of this section, the RWPG shall hold a public hearing on the intent to pursue simplified planning for the RWPA, to be held after submitting the Technical Memorandum and in accordance with §357.21(g)(3) of this title. This public hearing is not required for RWPGs that state they will not pursue simplified planning in their Technical Memorandum.

(h) Following receipt of public comments, the RWPG shall hold a meeting in accordance with the requirements of §357.21(g)(1) of this title to consider comments received and declare implementation of simplified planning.

(i) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 (relating to Open Meetings) and 552 (relating to Public Information), Government 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 April 11, 2022.  
TRD-202201327

Ashley Harden  
General Counsel  
Texas Water Development Board  
Effective date: May 1, 2022  
Proposal publication date: December 31, 2021  
For further information, please call: (512) 463-7686

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**SUBCHAPTER B. GUIDANCE PRINCIPLES  
AND NOTICE REQUIREMENTS**

**31 TAC §357.21, §357.22**

**STATUTORY AUTHORITY**

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code § 16.053 and §15.439 are affected by this rulemaking.

*§357.21. Notice and Public Participation.*

(a) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is exempted from the Public Information Act, Texas Government Code, Chapter 552. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

(b) Each RWPG shall create and maintain a website that they will use to post public notices of all its full RWPG, committee, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with this section.

(c) Each RWPG shall provide a means by which it will accept written public comment prior to and after meetings. The RWPGs must also allow oral public comment during RWPG meetings and hearings.

(d) Each RWPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RWPG activities.

(e) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines and any additional notice requirements provided in subsections (g)(1) - (3) and (h) of this section or any additional notice requirements in the RWPG bylaws, to all voting and non-voting RWPG members and any person or entity who has requested notice of RWPG activities. Notice must also be provided to the following:

(1) if a recommended or Alternative WMS that is located outside of the RWPG is being considered, the RWPG where the recommended or Alternative WMS is located must also receive notice of any meeting or hearing where action or public input may be taken on the recommended or Alternative WMS.

(2) for hearings on declarations of intent to pursue simplified planning, if an RWPG shares a water supply source, WMS, or WMSP with another RWPG, the RWPG declaring intent to pursue simplified planning must notify the RWPG with shared source, WMS, or WMSP.

(3) each project sponsor of an infeasible WMS or WMSP must be provided notice of any meeting or hearing where action may be taken on the infeasible WMS or WMSP.

(f) At a minimum, all meeting and hearing notices must be posted to the RWPG website and on the secretary of state website and must include:

- (1) the date, time, and location of the meeting;
- (2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments will be received from the members and public.

(g) In addition to subsections (a) - (f) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available on the RWPG website at least three days prior to and seven days following the meeting when the planning group will take the following actions:

- (A) regular RWPG meetings and any RWPG committee or subcommittee meetings;
- (B) approval of requests for funds from the Board;
- (C) amendments to the scope of work or budget included in the regional water planning grant contract between the political subdivision and TWDB;
- (D) approval of revision requests for draft population projections and Water Demand projections;
- (E) adoption of the IPP;
- (F) approval to submit a request to EA for approval of an Alternative WMS substitution or to request an EA determination of a minor amendment;
- (G) declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning;
- (H) initiation of major amendments to RWPs and adoption of major amendments following a public hearing on the amendment;
- (I) adoption of errata pursuant to §357.51(i) of this title (relating to Amendments to Regional Water Plans) to final RWPs;
- (J) approval of replacement RWPG members to fill voting and non-voting position vacancies; and
- (K) any other RWPG approvals required by the regional water planning grant contract between TWDB and the political subdivision.

(2) at a minimum, notice must be provided at least 14 days prior to the meeting, written comment must be accepted for 14 days prior to the meeting and considered by the RWPG members prior to taking the associated action, and meeting materials must be made avail-

able on the RWPG website for a minimum of seven days prior to and 14 days following the meeting, when the planning group will take the following actions:

- (A) approval to submit revision requests to officially adopted Board population and Water Demand projections;
- (B) approval of process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs;
- (C) approval to submit the Technical Memorandum;
- (D) adoption of the final RWP;
- (E) approval to substitute Alternative WMSs; and
- (F) adoption of minor amendments to RWPs.

(3) at a minimum, notice must be provided at least 30 days prior to the hearing, written comment must be accepted for 30 days prior to and following the date of the hearing and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the hearing, when the planning group will receive input from the public on the following items:

- (A) declarations to pursue simplified planning; and
- (B) major amendments to RWPs.

(h) when holding pre-planning public meetings to obtain public input on development of the next RWP, holding hearings on the IPP, or making revisions to RWPs based on interregional conflict resolutions, in addition to the requirements of subsection (e) of this section, the following additional public notice and document provisions must be met per TWC §16.053(h):

- (1) notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.
- (2) at a minimum, notice must be provided at least 30 days prior to the meeting or hearing.
- (3) written comments to be accepted as follows:
  - (A) written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and
  - (B) at least 60 days following the date of the public hearing on an IPP.
- (4) if more than one hearing on the IPP is held, the notice and comment periods apply to the date of the first hearing.
- (5) additional entities to be notified by mail under this subsection include:
  - (A) each adjacent RWPG;
  - (B) each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;
  - (C) each county judge of a county located in whole or in part in the RWPA;
  - (D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission;
  - (E) each Retail Public Utility, defined as a community water system, that serves any part of the RWPA or receives water from

the RWPA based upon lists of such entities obtained from the Commission; and

(F) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission.

(6) the public hearings shall be conducted at a central location readily accessible to the public within the regional water planning area.

(7) RWPGs shall make copies of the IPP available for public inspection at least 30 days before the required public hearing by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA. The locations of such copies shall be included in the public hearing notice. For distribution of the IPP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate public library and location in the county courthouse to ensure maximum accessibility to the public during business hours. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(8) Any additional meeting materials associated with meetings in this subsection must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the meeting or hearing.

(i) All notice periods given are based on calendar days.

(j) Each RWPG shall include a statement in their draft and final adopted RWPs regarding the RWPG's conformance with this section.

§357.22. *General Considerations for Development of Regional Water Plans.*

(a) RWPGs shall consider existing local, regional, and state water planning efforts, including water plans, information and relevant local, regional, state and federal programs and goals when developing the RWP. The RWPGs shall also consider:

- (1) Water Conservation Plans;
- (2) drought management and Drought Contingency Plans;
- (3) information compiled by the Board from water loss audits performed by Retail Public Utilities pursuant to §358.6 of this title (relating to Water Loss Audits);
- (4) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;
- (5) local and regional water management plans;
- (6) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code §35.019 (relating to Priority Groundwater Management Areas);
- (7) the Texas Clean Rivers Program;
- (8) the U.S. Clean Water Act;
- (9) water management plans;
- (10) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;

(11) approved groundwater conservation district management plans and other plans submitted under Texas Water Code §16.054 (relating to Local Water Planning);

(12) approved groundwater regulatory plans;

(13) potential impacts on public health, safety, or welfare;

(14) water conservation best management practices available on the TWDB website; and

(15) any other information available from existing local or regional water planning studies.

(b) The RWP shall contain a separate chapter for the contents of §§357.30, 357.31, 357.32, 357.33, 357.42, 357.43, 357.45, and 357.50 of this title and shall also contain a separate chapter for the contents of §357.34 and §§357.35, 357.40 and 357.41 of this title for a total of ten separate chapters.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Water Development Board

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For further information, please call: (512) 463-7686



## SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

### 31 TAC §§357.31 - 357.34

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code §16.053 and §15.439 are affected by this rulemaking.

§357.31. *Projected Population and Water Demands.*

(a) RWPs shall present projected population and Water Demands by WUG as defined in §357.10 of this title (relating to Definitions and Acronyms). If a WUG lies in one or more counties or RWPA or river basins, data shall be reported for each river basin, RWPA, and county split.

(b) RWPs shall present projected Water Demands associated with MWPs by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for the RWPA.

(c) RWPs shall evaluate the current contractual obligations of WUGs and WWP to supply water in addition to any demands projected for the WUG or WWP. Information regarding obligations to supply water to other users must also be incorporated into the water supply analysis in §357.32 of this title (relating to Water Supply Analysis) in order to determine net existing water supplies available for each WUG's own use. The evaluation of contractual obligations under this subsection is limited to determining the amount of water secured by the contract and the duration of the contract.

(d) Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in the Texas Health and Safety Code, Chapter 372. RWPGs shall report how changes in plumbing fixtures would affect projected municipal Water Demands using projections with plumbing code savings provided by the Board or by methods approved by the EA.

(e) Source of population and Water Demands. In developing RWPs, RWPGs shall use:

(1) Population and Water Demand projections developed by the EA that shall be contained in the next State Water Plan and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

(2) RWPGs may request revisions of Board adopted population or Water Demand projections if the request demonstrates that population or Water Demand projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions and or new information. Before requesting a revision to population and Water Demand projections, the RWPG shall discuss the proposed revisions at a public meeting for which notice has been posted in accordance with §357.21(g)(2) of this title (relating to Notice and Public Participation). The RWPG shall summarize public comments received on the proposed request for projection revisions. The EA shall consult with the requesting RWPG and respond to their request within 45 days after receipt of a request from an RWPG for revision of population or Water Demand projections.

(f) Population and Water Demand projections shall be presented for each Planning Decade for WUGs in accordance with subsection (a) of this section and MWPs in accordance with subsection (b) of this section.

#### §357.32. *Water Supply Analysis.*

(a) RWPGs shall evaluate:

(1) source water Availability during Drought of Record conditions; and

(2) Existing Water Supplies that are legally and physically available to each WUG and WWP within the RWPA for use during the Drought of Record.

(b) Evaluations shall consider surface water and groundwater data from the State Water Plan, existing water rights, contracts and option agreements relating to water rights, other planning and water supply studies, and analysis of water supplies existing in and available to the RWPA during Drought of Record conditions.

(c) For surface water supply analyses, RWPGs shall use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. As the default approach for evaluating existing supplies, RWPGs shall assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use better, more representative, water availability modeling assumptions or better site-specific information with written approval from the EA. Information available from the Commission shall

be incorporated by RWPGs unless better site-specific information is available and approved in writing by the EA.

(1) Evaluation of existing stored surface water available during Drought of Record conditions shall be based on Firm Yield as defined in §357.10 of this title (relating to Definitions and Acronyms). The analysis may be based on justified operational procedures other than Firm Yield. The EA shall consider a written request from an RWPG to use procedures other than Firm Yield.

(2) Evaluation of existing run of river surface water available for municipal WUGs during Drought of Record conditions shall be based on the minimum monthly diversion amounts that are available 100 percent of the time, if those run of river supplies are the only supply for the municipal WUG.

(d) RWPGs shall use modeled available groundwater volumes for groundwater Availability, as issued by the EA, and incorporate such information in its RWP unless no modeled available groundwater volumes are provided. Groundwater Availability used in the RWP must be consistent with the desired future conditions as of the most recent deadline for the Board to adopt the State Water Plan or, at the discretion of the RWPG, established subsequent to the adoption of the most recent State Water Plan.

(1) An RWP is consistent with a desired future condition if the groundwater Availability amount in the RWP and on which an Existing Water Supply or recommended WMS relies does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers, in accordance with paragraph (2) of this subsection or as modified by paragraph (3) of this subsection, if applicable. The desired future condition must be either the desired future condition adopted as of the most recent deadline for the Board to adopt the State Water Plan or, at the option of the RWPG, a desired future condition adopted on a subsequent date.

(2) If no groundwater conservation district exists within the RWPA, then the RWPG shall determine the Availability of groundwater for regional planning purposes. The Board shall review and consider approving the RWPG-Estimated Groundwater Availability, prior to inclusion in the IPP, including determining if the estimate is physically compatible with the desired future conditions for relevant aquifers in groundwater conservation districts in the co-located groundwater management area or areas. The EA shall use the Board's groundwater availability models as appropriate to conduct the compatibility review.

(3) In RWPGAs that have at least one groundwater conservation district, the EA shall consider a written request from an RWPG to apply a MAG Peak Factor in the form of a percentage (e.g., greater than 100 percent) applied to the modeled available groundwater value of any particular aquifer-region-county-basin split within the jurisdiction of a groundwater conservation district, or groundwater management area if no groundwater conservation district exists, to allow temporary increases in annual availability for planning purposes. The request must:

(A) Include written approval from the groundwater conservation district, if a groundwater conservation district exists in the particular aquifer-region-county-basin split, and from representatives of the groundwater management area;

(B) Provide the technical basis for the request in sufficient detail to support groundwater conservation district, groundwater management area, and EA evaluation; and

(C) Document the basis for how the temporary availability increase will not prevent the groundwater conservation district from managing groundwater resources to achieve the desired future condition.



(e) Water supplies based on contracted agreements shall be based on the terms of the contract, which may be assumed to renew upon contract termination if the contract contemplates renewal or extensions.

(f) Evaluation results shall be reported by WUG in accordance with §357.31(a) of this title (relating to Projected Population and Water Demands) and MWP in accordance with §357.31(b) of this title.

*§357.33. Needs Analysis: Comparison of Water Supplies and Demands.*

(a) RWPs shall include comparisons of existing water supplies and projected Water Demands to identify Water Needs.

(b) RWPGs shall compare projected Water Demands, developed in accordance with §357.31 of this title (relating to Projected Population and Water Demands), with existing water supplies available to WUGs and WWP in a planning area, as developed in accordance with §357.32 of this title (relating to Water Supply Analysis), to determine whether WUGs will experience water surpluses or needs for additional supplies.

(c) Results of evaluations shall be reported by WUG in accordance with §357.31(a) of this title and by MWP in accordance with §357.31(b) of this title.

(d) RWPGs shall perform a secondary water needs analysis for all WUGs and WWPs for which conservation WMSs or direct Reuse WMSs are recommended. This secondary water needs analysis shall calculate the Water Needs that would remain after assuming all recommended conservation and direct Reuse WMSs are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and MWP and decade.

*§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.*

(a) RWPGs shall identify and evaluate potentially feasible WMSs and the WMSPs required to implement those strategies for all WUGs and WWPs with identified Water Needs.

(b) RWPGs shall identify potentially feasible WMSs to meet water supply needs identified in §357.33 of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands) in accordance with the process in §357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities and Procedures). Strategies shall be developed for WUGs and WWPs. WMS and WMSPs shall be developed for WUGs and WWPs that would provide water to meet water supply needs during Drought of Record conditions.

(c) Potentially feasible WMSs may include, but are not limited to:

(1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.

(2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, seawater desalination, brackish groundwater desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, rainwater harvesting, and aquifer storage and recovery.

(3) Conservation and Drought Management Measures including demand management.

(4) Reuse of wastewater.

(5) Interbasin Transfers of Surface Water.

(6) Emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the RWPA that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code §11.139 (relating to Emergency Authorizations).

(d) All recommended WMSs and WMSPs that are entered into the State Water Planning Database shall be designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPs in at least one planning decade such that additional water is available during Drought of Record conditions. Any other RWPG recommendations regarding permit modifications, operational changes, and/or other infrastructure that are not designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPs in at least one Planning Decade such that additional water is available during Drought of Record conditions shall be indicated as such and presented separately in the RWP and shall not be eligible for funding from the State Water Implementation Fund for Texas.

(e) Evaluations of potentially feasible WMSs and associated WMSPs shall include the following analyses:

(1) For the purpose of evaluating potentially feasible WMSs, the Commission's most current Water Availability Model with assumptions of no return flows and full utilization of senior water rights, is to be used. Alternative assumptions may be used with written approval from the EA who shall consider a written request from an RWPG to use assumptions other than no return flows and full utilization of senior water rights.

(2) An equitable comparison between and consistent evaluation and application of all WMSs the RWPGs determine to be potentially feasible for each water supply need.

(3) A quantitative reporting of:

(A) The net quantity, reliability, and cost of water delivered and treated for the end user's requirements during Drought of Record conditions, taking into account and reporting anticipated strategy water losses, incorporating factors used in calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include costs of infrastructure associated with distribution of water within a WUG after treatment, except for specific, limited allowances for direct reuse and conservation WMSs.

(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations of effects on environmental flows shall include consideration of the Commission's adopted environmental flow standards under 30 Texas Administrative Code Chapter 298 (relating to Environmental Flow Standards for Surface Water). If environmental flow standards have not been established, then environmental information from existing site-specific studies, or in the absence of such information, state environmental planning criteria adopted by the Board for inclusion in the State Water Plan after coordinating with staff of the Commission and the Texas Parks and Wildlife Department to ensure that WMSs are adjusted to provide for environmental water needs including instream flows and bays and estuaries inflows.

(C) Impacts to agricultural resources.

(4) Discussion of the plan's impact on other water resources of the state including other WMSs and groundwater and surface water interrelationships.

(5) A discussion of each threat to agricultural or natural resources identified pursuant to §357.30(7) of this title (relating to Description of the Regional Water Planning Area) including how that threat will be addressed or affected by the WMSs evaluated.

(6) If applicable, consideration and discussion of the provisions in Texas Water Code §11.085(k)(1) for Interbasin Transfers of Surface Water. At minimum, this consideration shall include a summation of Water Needs in the basin of origin and in the receiving basin.

(7) Consideration of third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas.

(8) A description of the major impacts of recommended WMSs on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended WMSs to current conditions using best available data.

(9) Other factors as deemed relevant by the RWPG including recreational impacts.

(f) RWPGs shall evaluate and present potentially feasible WMSs and WMSPs with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.

(g) If an RWPG does not recommend aquifer storage and recovery strategies, seawater desalination strategies, or brackish groundwater desalination strategies it must document the reason(s) in the RWP.

(h) In instances where an RWPG has determined there are significant identified Water Needs in the RWPA, the RWP shall include an assessment of the potential for aquifer storage and recovery to meet those Water Needs. Each RWPG shall define the threshold to determine whether it has significant identified Water Needs. Each RWP shall include, at a minimum, a description of the methodology used to determine the threshold of significant needs. If a specific assessment is conducted, the assessment may be based on information from existing studies and shall include minimum parameters as defined in contract guidance.

(i) Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending WMSs. RWPGs shall incorporate water conservation planning and drought contingency planning in the RWPA.

(1) Drought Management Measures including water demand management. RWPGs shall consider Drought Management Measures for each need identified in §357.33 of this title and shall include such measures for each user group to which Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the Drought Management Measures on Water Needs must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code §11.1272. If an RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. RWPGs must consider water conservation practices, including potentially applicable best management practices, for each identified Water Need.

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code §11.1271 and §13.146 (relating to Water Conservation Plans) apply. The impact of these water conservation practices on Water Needs must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code §11.1271 and §13.146.

(B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of subparagraph (A) of this paragraph, whether or not the WUG is subject to Texas Water Code §11.1271 and §13.146. If RWPGs do not adopt a Water Conservation Strategy to meet an identified need, they shall document the reason in the RWP.

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085 (relating to Interbasin Transfers) applies, RWPGs shall include a Water Conservation Strategy, pursuant to Texas Water Code §11.085(l), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs shall determine, and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs shall develop conservation strategies based on this determination. In preparing this evaluation, RWPGs shall seek the input of WUGs and WWPs as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs shall develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.085. When developing water conservation strategies, the RWPGs must consider potentially applicable best management practices. Strategy evaluation in accordance with this section shall include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by Retail Public Utilities pursuant to §358.6 of this title (relating to Water Loss Audits).

(3) RWPGs shall recommend Gallons Per Capita Per Day goal(s) for each municipal WUG or specified groupings of municipal WUGs. Goals must be recommended for each planning decade and may be a specific goal or a range of values. At a minimum, the RWPGs shall include Gallons Per Capita Per Day goals based on drought conditions to align with guidance principles in §358.3 of this title (relating to Guidance Principles).

(j) RWPGs shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWPGs model Water Conservation Plans pursuant to Texas Water Code §11.1271.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION

### 31 TAC §357.42

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code §16.053 and §15.439 are affected by this rulemaking.

§357.42. *Drought Response Information, Activities, and Recommendations.*

(a) RWPs shall consolidate and present information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, Drought of Record conditions based on the following subsections.

(b) RWPGs shall conduct an assessment of current preparations for drought within the RWPA. This may include information from local Drought Contingency Plans. The assessment shall include:

(1) A description of how water suppliers in the RWPA identify and respond to the onset of drought; and

(2) Identification of unnecessary or counterproductive variations in drought response strategies among water suppliers that may confuse the public or impede drought response efforts. At a minimum, RWPGs shall review and summarize drought response efforts for neighboring communities including the differences in the implementation of outdoor watering restrictions.

(c) RWPGs shall identify drought response triggers and actions regarding the management of existing groundwater and surface water sources in the RWPA designated in accordance with §357.32 of this title (relating to Water Supply Analysis), including:

(1) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response for each water source including specific recommended drought response triggers;

(2) Actions to be taken as part of the drought response by the manager of each water source and the entities relying on each source, including the number of drought stages; and

(3) Triggers and actions developed in paragraphs (1) and (2) of this subsection may consider existing triggers and actions associated with existing Drought Contingency Plans.

(d) RWPGs shall collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. At a minimum, the RWP shall include a general description of the methodology used to collect the information, the number of existing and potential emergency interconnects in the RWPA, and a list of which entities are connected to each other. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. Any excepted information collected shall be submitted separately to the EA in accordance with guidance to be provided by EA.

(e) RWPGs may provide general descriptions of local Drought Contingency Plans that involve making emergency connections between water systems or WWP systems that do not include locations or descriptions of facilities that are disallowed under subsection (d) of this section.

(f) RWPGs may designate recommended and alternative Drought Management Water Management Strategies and other recommended drought measures in the RWP including:

(1) List and description of the recommended Drought Management Water Management Strategies and associated WUGs and WWPs, if any, that are recommended by the RWPG. Information to include associated triggers to initiate each of the recommended Drought Management WMSs;

(2) List and description of alternative Drought Management WMSs and associated WUGs and WWPs, if any, that are included in the plan. Information to include associated triggers to initiate each of the alternative Drought Management WMSs;

(3) List of all potentially feasible Drought Management WMSs that were considered or evaluated by the RWPG but not recommended; and

(4) List and summary of any other recommended Drought Management Measures, if any, that are included in the RWP, including associated triggers if applicable.

(g) The RWPGs shall evaluate potential emergency responses to local drought conditions or loss of existing water supplies; the evaluation shall include identification of potential alternative water sources that may be considered for temporary emergency use by WUGs and WWPs in the event that the Existing Water Supply sources become temporarily unavailable to the WUGs and WWPs due to unforeseeable hydrologic conditions such as emergency water right curtailment, unanticipated loss of reservoir conservation storage, or other localized drought impacts. RWPGs shall evaluate, at a minimum, municipal WUGs that:

(1) have existing populations less than 7,500;

(2) rely on a sole source for its water supply regardless of whether the water is provided by a WWP; and

(3) all County-Other WUGs.

(h) RWPGs shall consider any relevant recommendations from the Drought Preparedness Council.

(i) RWPGs may make drought preparation and response recommendations regarding:

(1) Development of, content contained within, and implementation of local Drought Contingency Plans required by the Commission;

(2) Current drought management preparations in the RWPA including:

- (A) drought response triggers; and
- (B) responses to drought conditions;

(3) The Drought Preparedness Council and the State Drought Preparedness Plan; and

(4) Any other general recommendations regarding drought management in the region or state.

(j) The RWPGs shall develop region-specific model Drought Contingency Plans.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Water Development Board

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### 31 TAC §357.44, §357.46

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to propose rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is proposed under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to propose rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to propose rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code §16.053 and §15.439 are affected by this rulemaking.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### SUBCHAPTER E. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL WATER PLANS

#### 31 TAC §357.50, §357.51

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code §16.053 and §15.439 are affected by this rulemaking.

*§357.50. Adoption, Submittal, and Approval of Regional Water Plans.*

(a) The RWPGs shall submit their adopted RWPs to the Board every five years on a date to be disseminated by the EA, as modified by subsection (g)(2) of this section, for approval and inclusion in the State Water Plan.

(b) Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP. The IPP submitted to the EA must be in the electronic and paper format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG. In the instance of a recommended WMS proposed to be supplied from a different RWPA, the RWPG recommending such strategy shall submit, concurrently with the submission of the IPP to the EA, a copy of the IPP, or a letter identifying the WMS in the other region along with an internet link to the IPP, to the RWPG associated with the location of such strategy.

(c) The RWPGs shall distribute the IPP in accordance with §357.21(h)(7) of this title (relating to Notice and Public Participation).

(d) Within 60 days of the submission of IPPs to the EA, the RWPGs shall submit to the EA, and the other affected RWPG, in writing, the identification of potential Interregional Conflicts by:

(1) identifying the specific recommended WMS from another RWPG's IPP;

(2) providing a statement of why the RWPG considers there to be an Interregional Conflict; and

(3) providing any other information available to the RWPG that is relevant to the Board's decision.

(e) The RWPGs shall seek to resolve conflicts with other RWPGs and shall promptly and actively participate in any Board sponsored efforts to resolve Interregional Conflicts.

(f) The RWPGs shall solicit, and consider the following comments when adopting an RWP:

(1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP; and

(2) any written or oral comments received from any federal agency, Texas state agency, or the public after the first public hearing notice is published until at least 60 days after the public hearing is held pursuant to §357.21(h) of this title.

(3) The RWPGs shall revise their IPPs to incorporate negotiated resolutions or Board resolutions of any Interregional Conflicts into their final adopted RWPs.

(4) In the event that the Board has not resolved an Interregional Conflict sufficiently early to allow an involved RWPG to modify

and adopt its final RWP by the statutory deadline, all RWPGs involved in the conflict shall proceed with adoption of their RWP by excluding the relevant recommended WMS and all language relevant to the conflict and include language in the RWP explaining the unresolved Interregional Conflict and acknowledging that the RWPG may be required to revise or amend its RWP in accordance with a negotiated or Board resolution of an Interregional Conflict.

(g) Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and amendments to approved RWPs to the EA in conformance with this section.

(1) RWPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) An executive summary that documents key RWP findings and recommendations;

(C) Documentation of the RWPG's interregional coordination efforts; and

(D) A copy of the EA's comments on the IPP and summaries of all written and oral comments received pursuant to subsection (f) of this section, with a response by the RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (f) of this section.

(2) RWPGs shall submit RWPs to the EA according to the following schedule:

(A) IPPs are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the IPP, the RWPGs shall upload all required data, metadata and all other relevant digital information supporting the plan to the Board's State Water Planning Database. All changes and corrections to this information must be entered into the Board's State Water Planning Database prior to submittal of a final adopted plan.

(C) The RWPG shall transfer copies of all data, models, and reports generated by the planning process and used in developing the RWP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RWPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RWPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted consistent with the timelines in Texas Water Code §16.053(i).

(E) Once approved by the Board, RWPs shall be made available on the Board website.

(h) Upon receipt of an RWP adopted by the RWPG, the Board shall consider approval of such plan based on the following criteria:

(1) verified adoption of the RWP by the RWPG; and

(2) verified incorporation of any negotiated resolution or Board resolution of any Interregional Conflicts, or in the event that an Interregional Conflict is not yet resolved, verified exclusion of the relevant recommended WMS and all language relevant to the conflict.

(i) Approval of RWPs by the Board. The Board may approve an RWP only after it has determined that the RWP complies with statute and rules.

(j) The Board shall consider approval of an RWP that includes unmet municipal Water Needs provided that the RWPG includes adequate justification, including that the RWP:

(1) documents that the RWPG considered all potentially feasible WMSs, including Drought Management WMSs and contains an explanation why additional conservation and/or Drought Management WMSs were not recommended to address the need;

(2) describes how, in the event of a repeat of the Drought of Record, the municipal WUGs associated with the unmet need shall ensure the public health, safety, and welfare in each Planning Decade that has an unmet need; and

(3) explains whether there may be occasion, prior to development of the next IPP, to amend the RWP to address all or a portion of the unmet need.

(k) Board Adoption of State Water Plan. RWPs approved by the Board pursuant to this chapter shall be incorporated into the State Water Plan as outlined in §358.4 of this title (relating to Guidelines).

#### §357.51. Amendments to Regional Water Plans.

(a) Local Water Planning Amendment Requests. A Political Subdivision in the RWPA may request an RWPG to consider specific changes to an adopted RWP based on changed conditions or new information. An RWPG must formally consider such request within 180 days after its receipt and shall amend its adopted RWP if it determines an amendment is warranted. If the Political Subdivision is not satisfied with the RWPG's decision on the issue, it may file a petition with the EA to request Board review the decision and consider changing the approved RWP. The Political Subdivision shall send a copy of the petition to the chair of the affected RWPG.

(1) The petition must state:

(A) the changed condition or new information that affects the approved RWP;

(B) the specific sections and provisions of the approved RWP that are affected by the changed condition or new information;

(C) the efforts made by the Political Subdivision to work with the RWPG to obtain an amendment; and

(D) the proposed amendment to the approved RWP.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in writing. The Political Subdivision that submitted the petition shall receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA, after which the EA shall present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA shall provide the RWPG, the Political Subdivision submitting the petition, and any Political Subdivision determined by the EA to be affected by the issue 30 days notice. At the public meeting, the Board may direct the RWPG to amend its RWP based on the local Political Subdivision's request.

(b) Major Amendments to RWPs and State Water Plan. An RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.21(g)(3) of this title (relating to Notice and Public Participation). An amendment is major if it does not meet the criteria of subsection

(c), (d) or (e) of this section. An RWPG may propose amendments to an approved RWP by submitting proposed amendments to the Board for its consideration and possible approval under the standards and procedures of this section.

(1) **Initiation of a Major Amendment.** An entity may request an RWPG amend its adopted RWP. An RWPG's consideration for action to initiate an amendment may occur at a regularly scheduled meeting.

(2) **RWPG Public Hearing.** The RWPG shall hold a public hearing on the amendment pursuant to §357.21(g)(3) of this title. The amendment shall be available for agency and public comment at least seven days prior to the public hearing and 30 days following the public hearing as required by §357.21(g)(3) of this title.

(3) **The proposed major amendment:**

(A) Shall not result in an over-allocation of an existing or planned source of water; and

(B) Shall conform with rules applicable to RWP development as defined in Subchapters C and D of this chapter.

(4) **RWPG Major Amendment Adoption.** The RWPG may adopt the amendment at a regularly scheduled RWPG meeting pursuant to §357.21(g)(1) after the public hearing held in accordance with §357.21(g)(3). The amendment shall include response to comments received.

(5) **Board Approval of Major Amendment.** After adoption of the major amendment, the RWPG shall submit the amendment to the Board which shall consider approval of the amendment at its next regularly scheduled meeting following EA review of the amendment.

(c) **Minor Amendments to RWPs and State Water Plan.**

(1) An RWPG may amend its RWP by first providing a copy of the proposed amendment to the EA for a determination as to whether the amendment would be minor.

(2) **EA Pre-Adoption Review.** The EA shall evaluate the proposed minor amendment prior to the RWPG's vote to adopt the amendment. An amendment is minor if it meets the following criteria:

(A) does not result in over-allocation of an existing or planned source of water;

(B) does not relate to a new reservoir;

(C) does not increase unmet needs or produce new unmet needs in the adopted RWP unless the increase in unmet needs or new unmet needs is the result of removing infeasible WMSs and/or WMSPs in accordance with subsection (g) of this section and Texas Water Code §16.053(h)(10);

(D) does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;

(E) does not have a significant substantive impact on water planning or previously adopted management strategies; and

(F) does not delete or change any legal requirements of the plan.

(3) **Determination by EA.** If the EA determines that the proposed amendment is minor, EA shall notify, in writing, the RWPG as soon as practicable.

(4) **RWPG Public Meeting.** After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with §357.21(g)(2) of this title. The public shall have an op-

portunity to comment and the RWPG shall amend the proposed minor amendment based on public comments, as appropriate, and to comply with existing statutes and rules related to regional water planning responses. The adopted amendment shall include response to comments received.

(5) **Board Approval of Minor Amendment.** After adoption of the minor amendment, the RWPG shall submit the amendment to the Board which shall approve the amendment at its next regularly scheduled meeting unless the amendment contradicts or is in substantial conflict with statutes and rules relating to regional water planning.

(d) **Amendment for Water Planning for a Clean Coal Project.** An amendment to an RWP or the State Water Plan to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Texas Water Code §5.001, relating to the Texas Commission on Environmental Quality, shall be adopted by the process described in this section. However, an RWPG may amend the RWP to accommodate planning for a clean coal project without a public meeting or hearing if the EA determines that:

(1) the amendment does not significantly change the RWP; or

(2) the amendment does not adversely affect other WMSs in the RWP.

(e) **Substitution of Alternative WMSs.** RWPGs may substitute one or more evaluated Alternative Water Management Strategies for a recommended strategy if the strategy originally recommended is no longer recommended and the substitution of the Alternative WMS is capable of meeting the same Water Need without over-allocating any source. Before substituting an Alternative WMS, the RWPG must provide public notice in accordance with §357.21(g)(1) of this title and request written approval from the EA. If the EA approves the substitution, the RWPG must provide public notice in accordance with §357.21(g)(2) of this title before taking action to substitute the Alternative WMS.

(f) In the instance of a substitution of an Alternative WMS or a proposed amendment with a recommended WMS to be supplied from a different RWPA, the RWPG recommending such strategy shall submit, concurrently with the submission of the substitution or proposed amendment to the EA, a copy of the substitution or proposed amendment to the RWPG for the location of such strategy. The provisions of sections §357.50(d), (e), (f), and (h) of this title (related to Adoption, Submittal, and Approval of Regional Water Plans) and §357.62 of this title (related to Interregional Conflicts) shall apply to substitution or amendment to the RWP in the same manner as those subdivisions apply to an IPP.

(g) **Amendment for Infeasible Recommended WMSs or WMSPs.** Following the results of the analysis presented at a public meeting in accordance with §357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities and Procedures), an RWPG shall amend an adopted RWP to remove an infeasible recommended WMS or WMSP, as defined by Texas Water Code §16.053(h)(10). The RWPG will follow the amendment processes in accordance with subsections (b), (c), or (e) of this section. An amendment for infeasible recommended WMSs or WMSPs shall be submitted to the Board by a date established by the EA. The amendment shall summarize the project components and address why they were determined to be infeasible. The amendment must also summarize any changes to unmet needs as a result of removing the infeasible WMS or WMSP. Subsequent amendments during the planning cycle for infeasible recommended WMS or WMSP may occur at the discretion of the RWPG based upon information presented to the RWPG by project sponsors.

(h) Amending the State Water Plan. Following amendments of RWPs, including substitutions of Alternative WMSs, the Board shall make any necessary amendments to the State Water Plan as outlined in §358.4 of this title (relating to Guidelines).

(i) Errata to RWPs. RWPGs may adopt errata to the final RWP to correct minor, non-substantive errors identified after adoption of the final RWP but prior to adoption of the corresponding State Water Plan. Before adopting errata to a final RWP, the RWPG must provide public notice and receive comments in accordance with §357.21(g)(1) of this title. Upon adoption of the errata, the RWPG shall submit to the EA an errata package containing revised pages of the RWP and public comments received. The EA will notify the RWPG within 60 days whether the errata are acceptable as errata or will need to be made through the amendment process.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Water Development Board

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## SUBCHAPTER F. CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS

### 31 TAC §357.62

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute, and Texas Water Code §15.439 which provides the TWDB with the authority to adopt rules providing for the use of money in the State Water Implementation Fund.

Texas Water Code §16.053 and §15.439 are affected by this rulemaking.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 358. STATE WATER PLANNING GUIDELINES

### SUBCHAPTER A. STATE WATER PLAN DEVELOPMENT

#### 31 TAC §358.3, §358.4

The Texas Water Development Board ("TWDB" or "board") adopts amendments to 31 Administrative Code (TAC) §358.3 and §358.4. The proposal is adopted without changes as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9213). The rules will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The purpose of the amendments to 31 TAC §358 is to address concerns raised by regional water planning group stakeholders, through preliminary input on guidance principles review as required by Texas Water Code §16.051(d), and the Interregional Planning Council to clarify that regional water planning groups may plan for drought conditions worse than the drought of record. The revisions also clarify language throughout the section including adding the term water management strategy project.

#### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

##### *Subchapter A. State Water Plan Development.*

##### *Section §358.3. Guidance Principles.*

Section §358.3(2) is revised to clarify that regional water planning groups, at their discretion, may plan for drought conditions worse than the drought of record. This revision reflects and better accommodates recent planning efforts by some RWPGs to plan beyond the drought of record. It is also responsive to preliminary input received from stakeholders and addresses the 2020 Interregional Planning Council recommendations to the TWDB. The revision does not require that regional water planning groups plan for drought conditions worse than the drought of record.

Section §358.3(8) is revised to include water management strategy projects. The term water management strategy projects is added through the section to align the state water planning guidance principles terminology with Regional Water Planning administrative rules. Water management strategy projects are distinct from the term water management strategy. As defined in Section §357.10(41) a water management strategy project is a "Water project that has a non-zero capital costs and that when implemented, would develop, deliver, or treat additional water supply volumes, or conserve water for Water User Groups or Wholesale Water Providers. One WMSP may be associated with multiple WMSs."

Section §358.3(9) is revised to include water management strategy projects and add clarity to the rule.

Section §358.3(20) is revised to add clarity to the rule.

Section §358.3(21) is revised to include water management strategy projects.

Section §358.3(22) is revised to include water management strategy projects.

Section §358.3(26) is revised to include water management strategy projects and reference the appropriate subsections of §357.34.

#### Section §358.4. Guidelines.

Section §358.4(b)(2) is revised to clarify the livestock water user group terminology and add clarity to the rule.

Section §358.4(b)(4)(G) is revised to clarify the livestock water user group terminology.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments to comply with the adopted revision. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are necessary to protect the health, safety, and welfare of the residents of this state.

#### PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the rulemaking is in effect, the public will benefit from the rulemaking as it will clarify existing rule language, align the guidance principle terminology with regional water planning rule language, and clarify that regional water planning groups may plan for drought conditions worse than the drought of record.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the adopted rule does not adversely affect a local economy in a material way for the first five years that the rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the adopted rulemaking. Therefore, no regulatory flexibility analysis is necessary.

#### REGULATORY IMPACT ANALYSIS DETERMINATION

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

public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify existing language, align the guidance principle terminology with regional water planning rule language, and clarify that regional water planning groups may plan for drought conditions worse than the drought of record.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed the standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather under the authority of Texas Water Code §§16.051 and 16.053. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify existing language, align the guidance principle terminology with regional water planning rule language, and clarify that regional water planning groups may plan for drought conditions worse than the drought of record. The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the adopted rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the adopted rule would be in effect, the adopted rule will not: (1) create or eliminate a government program; (2) require



the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

The following written comments were received from the Central Texas Water Coalition (CTWC), City of Austin, Freese and Nichols, Inc. (FNI), National Wildlife Federation (NWF), Sierra Club Lone Star Chapter, and Texas 2036.

##### *Regarding*

Section 358.3 Guidance Principles.

##### *Comment*

The City of Austin commented that it supports development of guidance to assist regional water planning groups in addressing the risks of droughts worse than the drought of record.

##### *Response*

The TWDB appreciates this comment. No change has been made in response to this comment.

##### *Comment*

Texas 2036 commented that 31 TAC Chapter 358 should be expanded to include broader contemplation of water markets and proposed that §358.3(10) be revised to specify consideration of water markets.

##### *Response*

The TWDB appreciates this comment, but it is outside the scope of this rulemaking. No change has been made in response to this comment.

##### *Comment*

Sierra Club Lone Star Chapter and NWF provided additional guidance principles be added to §358.3 or incorporated into guidance for the sixth round of regional water planning including the topics of evaluating social vulnerability, consideration of changes in climate and the impact on planning, holistic management and resilience of water resources, and consideration of surface and groundwater resources in the development of water management strategies.

##### *Response*

The TWDB appreciates this comment. The TWDB notes that these comments are not in response to any specific proposed rule change, but rather the comments request the addition of new guidance principles. The TWDB will take these items into consideration as appropriate when developing guidance for the sixth planning cycle. No change has been made in response to this comment.

##### *Comment*

CTWC, City of Austin, FNI, and Texas 2036 commented that they support the proposed addition to §358.3(2) regarding clarification that regional water planning groups may plan for drought conditions worse than the drought of record.

##### *Response*

The TWDB appreciates these comments. No change has been made in response to these comments.

##### *Comment*

Sierra Club Lone Star Chapter and NWF commented that they do not disagree with regional water planning groups being able to plan for drought conditions worse than the drought of record and suggested that the phrase "at their discretion" be removed from the proposed language in §358.3(2). Sierra Club Lone Star Chapter and NWF commented that "at their discretion" is redundant and may convey a sense that planning groups have no criteria or parameters to consider in deciding whether to plan for conditions worse than the drought of record.

Sierra Club Lone Star Chapter and NWF also commented that the TWDB should provide guidance to regions on how to assess and respond to the prospects for droughts worse than the drought of record to produce a consistent approach across all regions. It was recommended that the guidance include specific criteria and metrics for evaluating risks, additional attention to demand management to address such droughts, and limitations on using droughts worse than the drought of record as a rationale for recommending water projects in excess of projected needs. If the TWDB intends to provide guidance on planning for droughts worse than the drought of record, it is suggested that the proposed phrase "at their discretion" in §358.3(2) be revised to "consistent with guidance developed by the Board".

##### *Response*

The TWDB appreciates this comment. The TWDB intends to provide illustrative examples of ways planning groups could address uncertainty in water planning in regional water planning contract guidance documents for the current planning cycle. However, since the decision of whether to plan for drought conditions worse than the drought of record is left to the planning group's discretion, TWDB considers the proposed rule language appropriate. No changes have been made in response to this comment.

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.051 which provides the TWDB with the authority to adopt rules necessary to develop the state water plan and §16.053 which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute.

Texas Water Code §§16.051 and 16.053 are affected by this rulemaking.

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 April 11, 2022.

TRD-202201333

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**CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS**

The Texas Water Development Board ("TWDB" or "board") adopts new 31 Texas Administrative Code (TAC) §§363.504 - 363.506, 363.508, 363.510 - 363.514, and amendments to existing 31 TAC §363.502 and §363.503, relating to the Economically Distressed Areas Program, and 31 TAC §363.1304 and §363.1309, relating to the State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas. The proposal is adopted without changes as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9216). The rules will not be republished.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED ADDITIONS AND AMENDMENTS.**

The TWDB adopts the additions and amendments to implement legislative changes from Senate Bill 2452, 86th (R) Legislative Session and to implement changes in program management, including the use of an intended use plan to assist in administering the program. The specific provisions amended or added and the reasons for the amendments are addressed in more detail below. Deletion of 31 TAC §§363.1304(12) and language within 363.1309(b)(2) are also adopted to implement changes from House Bill 1905 from the 87th Texas Legislature relating to relieving regional water planning groups of certain duties.

**SECTION BY SECTION DISCUSSION OF ADOPTED ADDITIONS AND AMENDMENTS.**

**Subchapter E. Economically Distressed Areas.**

**31 TAC §363.502 Definitions of Terms**

Section 363.502 is amended to delete the terms "capital component", "comparable service provider", "default rate", "living unit equivalents or LUE", "long term capital debt", "payment rate", "regional capital component benchmark", and "regional payment benchmark" because the sections containing these terms are published for repeal elsewhere in this issue of the *Texas Register*, and to include the definition for "intended use plan" that will provide details on the uses of funds under this program.

**31 TAC §363.503 Determination of Economically Distressed Area**

Section 363.503 is amended to remove a determination that water service is considered inadequate based on the project area being identified in the state water plan. This method applied to prior funding that is no longer available for the program and therefore is not applicable.

**31 TAC §363.504 Intended Use Plan and Project Priority List**

Section 363.504 is added to describe the purpose and contents of the intended use plan and project priority list in the administration of the program. The existing §363.504 is published for repeal elsewhere in this issue of the *Texas Register*.

**31 TAC §363.505 Required Information for Full Applications**

Section 363.505 is added to replace the rule previously numbered as 363.504. Several changes are made based on Senate Bill 2452, 86th (R) Legislative Session. The notarized statement from the county judge now indicates the county is enforcing the model rules and includes a description of any measures taken to correct any deficiencies in compliance. Further, the application must indicate the method for repayment of financial assistance to assist the board in assessing the political subdivision's ability to repay the financial assistance. The requirements of the notarized affidavit from the authorized representative related to the applicant having no outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue of any kind or nature now refers only to those not related to public health and safety issues resulting from water supply or sewer services. The reference to five years of compliance with the model subdivision rules is deleted to emphasize the requirement to enforce model subdivision rules. Additional application information required in statute is added. The existing §363.504 is published for repeal elsewhere in this issue of the *Texas Register*.

**31 TAC §363.506 Review of Full Application and Assistance Conditions**

Section 363.506 is added to replace the rule previously numbered as 363.505. The program now offers as an option funding construction activities at the same time as planning, acquisition, and design funding. The existing §363.505 is published for repeal elsewhere in this issue of the *Texas Register*.

**31 TAC §363.508 Calculation of Financial Assistance**

Section 363.508 is added to replace the rule previously numbered as 363.506. The program will use an intended use plan to describe the form of financial assistance being offered at a particular time, including the manner of calculating the amount and form of any repayments. The existing §363.506 is published for repeal elsewhere in this issue of the *Texas Register*.

**31 TAC §363.510 Terms of Financial Assistance**

Section 363.510 is added to replace the rule previously numbered as 363.507. Consistent with Senate Bill 2452, 86th (R) Legislative Session, repayment is based on the political subdivision's ability to repay the financial assistance. The board will consider among other things the ability to maximize the portion of financial assistance for which repayment is required based on the political subdivision's ability to repay the assistance and take into account the limit on the total amount of financial assistance that does not require repayment found in Texas Water Code §17.933. The existing §363.507 is published for repeal elsewhere in this issue of the *Texas Register*.

**31 TAC §363.511 Required Sewer Connections**

Section 363.511 is added to replace the rule previously numbered as 363.508. No changes were made to the existing language. The existing §363.508 is published for repeal elsewhere in this issue of the *Texas Register*.

**31 TAC §363.512 Financial, Managerial, and Technical Training Requirements**

Section 363.512 is added to replace the rule previously numbered as 363.510. No changes were made to the existing language. The existing §363.510 is published for repeal elsewhere in this issue of the *Texas Register*.

**31 TAC §363.513 Residential Water and Sewer Connections**

Section 363.513 is amended for a minor edit to the name of the Texas Water Code and formatting.

#### 31 TAC §363.14 Reporting and Transparency Requirements

Section 363.14 is added to establish new reporting requirements to comply with Texas Water Code §17.937, as enacted by Senate Bill 2452, 86th (R) Legislative Session.

Subchapter M. State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas.

#### 31 TAC §363.1304(12) Prioritization Criteria

Section 363.1304(12) is proposed for removal because House Bill 1905 of the 87th Legislature removed the prioritization requirement for Regional Water Planning Groups and its inclusion would be inconsistent with statute.

#### 31 TAC §363.1309(2) Findings Required

Section 363.1309(2) is modified to implement the repeal of Texas Water Code §16.053(q) and the amendment made by House Bill 1905, 87th Legislative Session (relating to Infrastructure Financing Surveys). The revision removes the requirement for Regional Water Planning Groups to perform an infrastructure financing analysis.

#### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes that will enhance the effectiveness and administration of the program.

Even if the adopted amendments and rules were major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§15.439, 17.921, 17.9225, 17.927, 17.9275, 17.933, and 17.936. Therefore, the adopted amendments do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The board evaluated the adopted rules and amendments and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement new requirements in state law and enhancements in program management. The adopted rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the program.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The board is the agency that implements the Economically Distressed Areas Program.

Nevertheless, the board further evaluated the adopted rules and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding financial assistance under the Economically Distressed Areas Program without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No comments were received by the end of the public comment period on January 31, 2022, and no changes were made.

#### SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS

#### DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

#### 31 TAC §§363.502 - 363.506, 363.508, 363.510 - 363.514

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The additions and amendments are adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§15.439, 15.537, 17.921, 17.9225, 17.927, 17.9275, 17.933, and 17.936.

This rulemaking affects Water Code, Chapters 15 and 17.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden  
General Counsel  
Texas Water Development Board  
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Proposal publication date: December 31, 2021  
For further information, please call: (512) 463-7686



SUBCHAPTER M. STATE WATER  
IMPLEMENTATION FUND FOR TEXAS  
AND STATE WATER IMPLEMENTATION  
REVENUE FUND FOR TEXAS  
DIVISION 1. ECONOMICALLY DISTRESSED  
AREAS PROGRAM

**31 TAC §§363.1304, §363.1309**

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The additions and amendments are adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§15.439, 15.537, 17.921, 17.9225, 17.927, 17.9275, 17.933, and 17.936.

This rulemaking affects Water Code, Chapters 15 and 17.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel  
Texas Water Development Board  
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For further information, please call: (512) 463-7686



SUBCHAPTER E. ECONOMICALLY  
DISTRESSED AREAS  
DIVISION 1. ECONOMICALLY DISTRESSED  
AREAS PROGRAM

**31 TAC §§363.504 - 363.508, 363.510 - 363.512**

The Texas Water Development Board (TWDB or "board") adopts the repeal of 31 Texas Administrative Code (TAC) §§363.504 - 363.508, and 31 TAC §§363.510 - 363.512. The proposal is adopted without changes as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9226). The repeals will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES  
FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal to these sections of the rules because new rules 31 TAC §§363.504 - 363.508 and 31 TAC

§§363.510 - 363.512 are being adopted elsewhere in this issue of the *Texas Register* to implement legislative changes from House Bill 2452, 86th Legislative Session.

SECTION BY SECTION DISCUSSION OF THE ADOPTED REPEALS

*Subchapter E. Economically Distressed Areas.*

*31 TAC §363.504 Required Application Information*

Section 363.504 is repealed due to the addition of a new §363.504 covering the intended use plan and project priority list used for administering the program. The new §363.504 is adopted elsewhere in this issue of the *Texas Register*. The required application information for the full application is adopted under the new §363.505 found elsewhere in the *Texas Register*.

*31 TAC §363.505 Application Review and Assistance Conditions*

Section 363.505 is repealed due to addition of a new §363.505 covering required information for the full application used for administering the program. The new §363.505 is adopted elsewhere in this issue of the *Texas Register*. The full application review and assistance conditions are adopted under the new §363.506 found elsewhere in the *Texas Register*.

*31 TAC §363.506 Calculation of Financial Assistance*

Section 363.506 is repealed due to addition of a new §363.506 covering review of the full application and assistance conditions used for administering the program. The new §363.506 is adopted elsewhere in this issue of the *Texas Register*. The calculation of financial assistance is adopted under the new §363.508 found elsewhere in the *Texas Register*.

*31 TAC §363.507 Terms of Financial Assistance*

Section 363.507 is repealed due to addition of a new §363.507 that is reserved for future use. The new §363.507 is adopted elsewhere in this issue of the *Texas Register*. The terms of financial assistance are adopted under the new §363.510 found elsewhere in the *Texas Register*.

*31 TAC §363.508 Required Sewer Connections*

Section 363.508 is repealed due to addition of a new §363.508 covering calculation of financial assistance used for administering the program. The new §363.508 is adopted elsewhere in this issue of the *Texas Register*. The requirements for required sewer connections are adopted under the new §363.511 found elsewhere in the *Texas Register*.

*31 TAC §363.510 Financial, Managerial, and Technical Training Requirements*

Section 363.510 is repealed due to addition of a new §363.510 covering terms of financial assistance used for administering the program. The new §363.510 is adopted elsewhere in this issue of the *Texas Register*. The financial, managerial, and technical training requirements are adopted under the new §363.512 found elsewhere in the *Texas Register*.

*31 TAC §363.511 Temporary Continuation of Funding*

Section 363.511 is repealed because the authorizing statute expired and was not renewed. The application of this section of the rule to the program expired by operation of law on September 1, 2009.

*31 TAC §363.512 Projects Related to Implementation of the Water Plan*

Section 363.512 is repealed because the language related to the state water plan and prior funding that is no longer available is no longer needed for program administration.

#### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of these repeals is to implement legislative changes that will enhance the effectiveness and administration of the program.

Even if the adopted repeals were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§17.921, 17.9225, 17.927, 17.9275, 17.933, and 17.936. Therefore, the adopted repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The board evaluated the adopted repeals and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the repeals is to implement new requirements in state law and enhancements in program management. The adopted repeals would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the program.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the adopted repeals because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The board is the agency that implements the Economically Distressed Areas Program.

Nevertheless, the board further evaluated the adopted repeals and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of the adopted repeals would be

neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeal. In other words, this rule requires compliance with state law regarding financial assistance under the Economically Distressed Areas Program without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No comments were received by the end of the public comment period on January 31, 2022, and no changes were made.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The repeals are adopted under the authority of the Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§15.537, 17.921, 17.9225, 17.927, 17.9275, 17.933, and 17.936.

Texas Water Code, Chapter 17, Subchapter K is affected by this rulemaking.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

##### SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

##### DIVISION 1. PRIMARY AND DELEGATED PROCUREMENT AUTHORITY

#### 34 TAC §20.82

The Comptroller of Public Accounts adopts amendments to §20.82, concerning delegated purchases, with changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7018). The rule will be republished.

The comptroller delegates certain purchases of professional memberships to state agencies by rule in subsection (a)(8). Requirements for these purchases will be contained in new subsection (d)(4). This delegation will apply only to purchases that are already authorized by law, and which also cannot be procured competitively.

The amendment aligns subsection (b)(4) with Government Code, §2155.264, as amended by Senate Bill 799, 87th Legislature, 2021.

The amendment adds subsection (b)(5) as a clear instruction for state agencies to retain justifications for their proprietary purchases. This requirement has appeared in the comptroller's Procurement and Contract Management Guide since 2017.

The amendment adds subsection (b)(6) to allow state agencies to rely on a reasonable, good faith estimate of cost in conducting delegated procurements. This concept has been expressed in the Comptroller's Procurement and Contract Management Guide for a number of years, and is necessary to avoid wasteful repetition of effort by procurement staff if bids come in that unexpectedly exceed a procurement threshold. This new subsection recognizes that circumstances such as market conditions, resource limitations, or miscellaneous exigencies may affect an agency's ability to accurately estimate cost. Agencies are expected to reasonably select the most accurate method of estimating cost that is practicable under the circumstances, and to carry out that method in good faith.

Subsection (d)(1), regarding delegated purchases of goods, is revised and combined with former subsection (d)(4), regarding delegated purchases of services, to eliminate inconsistent wording of requirements. Deleted subsection (d)(4) referred incorrectly to "prepayment approval" by the comptroller, which is not a current practice, and contradicted the definition of contract value in this chapter, among other things. Subsection (d)(1)(B) restates the requirement of Government Code, §2155.083 to post solicitations on the Electronic State Business Daily and the requirement of Government Code, §2155.264 to solicit responses from vendors on the Centralized Master Bidders List. The requirement to attempt to provide a copy of a bid document to a vendor that previously held a contract has been deleted from subsection (d)(1)(B). That requirement is a recommended practice in the Comptroller's Procurement and Contract Management Guide, but may not be appropriate in every procurement.

Amended subsection (d)(2) will clarify that emergency purchases of goods and services by state agencies are subject to post-payment audit, and state agencies are required to retain appropriate documentation to facilitate audits.

Subsection (e) is revised to more thoroughly describe the process for delegation of solicitations which are not delegated by statute or rule.

Subsection (f), concerning debarred vendors, is being deleted so that the content can be reorganized as a new §20.588 in Chapter 20, Subchapter G.

The entire rule has been revised for clarity and updated terminology. Use of the term "contract file" rather than "procurement file" will be consistent in the amended rule.

The Texas Department of Transportation (TxDOT) submitted written comments on the proposed amendment. TxDOT recommended combining subsection (d)(1) with subsection (b) in order to provide clarity and avoid duplication. However, combining these provisions is not appropriate. Subsection (d) consists of

provisions applicable to particular delegated purchases, as its title indicates. In contrast, subsection (b) applies regardless of what is being purchased. Subsection (d)(1) applies to purchases of goods and services that are not covered in another paragraph of subsection (d). For example, the requirement to post a solicitation on the Electronic State Business Daily in subsection (d)(1)(B) applies to purchases of goods and services that are not emergency purchases under subsection (d)(2), perishable goods purchases under subsection (d)(3), publications purchased under subsection (d)(4), fuel, oil, and grease purchases under subsection (d)(5), distributor purchases under subsection (d)(6), or professional memberships under subsection (d)(7). In contrast, the requirement to solicit bids from bidders on the Centralized Master Bidders List under subsection (b)(4) applies to all purchases under authority delegated by the comptroller for which bidding is possible, regardless of what is being purchased. Therefore, the Comptroller declines to accept TxDOT's recommendation to combine subsection (d)(1) with subsection (b).

TxDOT also specifically recommended combining subsection (d)(1)(B) regarding public posting of solicitations with subsection (b)(4) regarding solicitation of bids. TxDOT indicates that the language of the two subdivisions is "duplicative." As described above, the separation of these subjects was deliberate because the scope of the solicitations to which they apply is not the same. In addition, although the Electronic State Business Daily and the Centralized Master Bidders List are commonly confused, they are not the same. Public posting is a requirement wholly separate from the solicitation of qualified bidders. The Comptroller declines to adopt this recommendation.

TxDOT also recommended revising subsection (d)(3) to replace the words "Purchases made under this authority" with a reference to subsection (a)(3). TxDOT's suggested cross-reference would be accurate, because both subdivisions relate to delegated purchases of perishable goods. However, replacing the descriptive phrase with a legal citation would require the reader to review subsection (a) and synthesize it with subsection (d)(3) in order to understand the meaning. Furthermore, because the proposed subsection (d)(3) begins with the words "Perishable goods," and the "authority" referenced is the authority to purchase perishable goods, the meaning of subsection (d)(3) as proposed is clear. It is also worth noting that while the phrase "Purchases made under this authority" has been in the Texas Administrative Code for at least four years, the comptroller has received no requests for clarification from state agencies or the public during that time. Nevertheless, in the interest of clarity, the comptroller adopts subsection (d)(3) with the non-substantive change of replacing the phrase "Purchases made under this authority" with "Purchases of perishable goods."

Finally, TxDOT recommended referring to "specific delegations" in subsection (e)(2). The comptroller adopts subsection (e)(2) with this non-substantive change.

These amendments are adopted under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The amendment implements Government Code, §§2155.061, 2155.077, 2155.083, 2155.131, 2155.264, 2155.323, and 2155.324.

§20.82. *Delegated Purchases.*

(a) General delegation. The purchase of the following goods and services is delegated to state agencies:

- (1) one-time purchases of goods, including goods for resale, the estimated cost of which does not exceed \$50,000;
- (2) emergency purchases;
- (3) purchases of perishable goods;
- (4) purchases of services, including services for resale, the estimated cost of which does not exceed \$100,000;
- (5) purchases of publications directly from the publisher;
- (6) fuel, oil, and grease purchases;
- (7) distributor purchases; and
- (8) professional memberships.

(b) Provisions generally applicable to delegated purchases.

(1) Competitive bidding is not required for purchases of \$10,000 or less.

(2) All required solicitations of informal bids must be directed to vendors which normally offer for sale the goods and services being purchased.

(3) Items purchased under delegated authority may not include items available under a term or cooperative contract (unless purchased in quantities less than minimum ordering quantities of the contract) or any item required by law to be purchased from a particular source.

(4) The state agency must solicit formal bids from all eligible vendors on the centralized master bidders list (CMBL) when making purchases in excess of \$25,000.

(5) The state agency must maintain documentation justifying a proprietary purchase in excess of \$10,000. A solicitation for a proprietary purchase must indicate that it is proprietary and products or services other than those specified will not be considered.

(6) An agency's cost estimate must be developed in good faith using a method that is reasonable under the circumstances.

(c) Withdrawal of delegated purchase authority. The comptroller will monitor compliance with established procedures for delegated purchases and may withdraw delegated purchase authority in whole or part from a state agency for continued violations after giving adequate warning. The comptroller will report to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board the findings that a state agency has not followed the comptroller's rules or the laws related to the delegated purchases.

(d) Provisions applicable to particular delegated purchases.

(1) Goods and services purchases. Purchases of goods and services may be made in accordance with the following provisions.

(A) State agencies must solicit at least three informal bids, including at least two bids from historically underutilized businesses (HUBs), on all purchases of goods and services exceeding \$10,000 and not exceeding \$25,000. State agencies must, to the extent possible, solicit bids from vendors on the CMBL and vendors in the HUB Directory. If a state agency is unable to locate two HUBs, it must make a note in the contract file.

(B) For delegated purchases of goods and services estimated to cost more than \$25,000, state agencies shall post a solicitation or notice of solicitation on the ESBD and, at a minimum, solicit formal bids from all eligible vendors within the NIGP classes and items des-

ignated for the procurement that are active on the CMBL. See §20.207 of this title (relating to Competitive Sealed Bidding), and §20.208 of this title (relating to Competitive Sealed Proposals).

(2) Emergency purchases. State agencies shall make emergency purchases in accordance with the following provisions.

(A) At least three informal bids should be obtained whenever possible.

(B) For an emergency purchase of goods or services exceeding \$25,000, a state agency must retain a full written explanation of the emergency along with other documentation required by the comptroller in the contract file.

(C) A state agency may contact the comptroller for advice and assistance in the handling of emergency purchases.

(3) Perishable goods. Purchases of perishable goods must be obtained through competitive bids, and appropriate documentation must be retained in the contract file.

(4) Publications. A state agency may purchase publications directly from the publisher when such publications are not available through statewide contract or through competitive bidding. Direct publication orders shall be made by following guidelines established by the comptroller. Examples of direct publications include, but are not limited to:

- (A) foreign publications;
- (B) out-of-print or rare publications;
- (C) back issues of magazines, journals, and newspapers;
- (D) publications of professional societies;
- (E) prepared films, tapes, and discs (audio, visual, or both);
- (F) computer software;
- (G) collections of any of the foregoing items, and microfilm or microfiche copies of any of the foregoing items; and
- (H) Library of Congress cards.

(5) Fuel, oil, and grease. A state agency may make fuel, oil, and grease purchases at service stations or in bulk. Fuel, oil, and grease purchases shall be made by following guidelines suggested by the comptroller. Non-competitive and emergency purchase procedures apply to purchases at service stations.

(6) Distributor purchases. A state agency may make distributor purchases by following guidelines established by the comptroller. A state agency may not purchase any of the following on a distributor purchase basis: consumable items; labor of any kind (see "service"); "will fit" parts (non-OEM); parts for stock; contract items; electrical parts for electric motors; electrical switch panel boards; electrical accessories.

(7) Professional memberships. A state agency may purchase professional memberships as described in Government Code, §2113.104 directly from a professional organization when such memberships are not available through competitive bidding, the administrative head of the agency, or that person's designee, has approved the purchase, the purchase will serve a public purpose, and the agency will receive adequate consideration in exchange for the purchase.

(e) Specific delegations.

(1) The authority to grant specific delegations resides with the director. Upon request of a state agency, the director shall determine

whether to delegate a procurement to a state agency or to carry out the procurement.

(2) A state agency seeking a specific delegation shall submit its proposed specifications for goods and services and evaluation criteria to the division using a procedure specified by the division. Alternately, a state agency may request for the division to develop specifications and evaluation criteria.

(3) At a minimum, state agencies granted specific delegations shall meet the following criteria:

(A) procurement audit standards set forth in §20.510 of this title (relating to Auditing of Purchase Related Documentation);

(B) minimum training and certification standards established in §20.133 of this title (relating to Training and Certification Program); and

(C) approved processes and procedures for the specific type of delegation being requested. All processes and procedures are subject to the prior review, revision and approval of the director.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Don Neal

General Counsel Operations and Support Legal Services

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### 34 TAC §20.84

The Comptroller of Public Accounts adopts amendments to §20.84, concerning advisory committees, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7021). The rule will not be republished.

The comptroller's purchasing advisory committee and vendor advisory committee have been automatically abolished by operation of Government Code, §2110.008. This amendment eliminates incorrect information about those committees, and provides current information about the comptroller's consultation of stakeholders to provide input related to procurement matters.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code §2155.0012.

The amendments implement Government Code, §2155.080 and §2155.081.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 2. PUBLICIZING PROCUREMENT: CMBL, ESB, AND VPTS

### 34 TAC §20.114

The Comptroller of Public Accounts adopts amendments to §20.114 concerning solicitation posting procedures, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7022). The section title is amended to include the name of the system it addresses, the "Electronic State Business Daily." The rule will not be republished.

Subsection (a) is amended to clarify that agencies must follow the comptroller's procedures when posting documents and information. The amendments to subsection (b) reflect that the comptroller maintains detailed posting instructions on its website, rather than in rule. Because all information required to post on the Electronic State Business Daily is included in the online instructions, subsections (c) and (d) are deleted.

The comptroller received comments regarding adoption of the amendment from the Texas Department of Transportation (TxDOT). TxDOT stated that "it is unclear if the procedures mentioned in the section will be set out in the Electronic State Business Daily (ESBD) System User Manual." The proposed rule states, "The comptroller will provide an ESBD User's Manual online with instructions for posting solicitations and awards on the ESBD." TxDOT recommended that the rule state that "procedures" (as opposed to "instructions") will be published online.

Both words, "instructions" and "procedures," have been used in §20.114 for many years without any ESBD users reporting confusion. The ESBD manual currently available on the comptroller's website contains instructions for posting solicitations and awards on the ESBD. These instructions constitute the procedures for posting solicitations and awards on the ESBD. There is no other source of procedures.

Because the instructions are the procedures, the rule is sufficiently clear. Its purpose is to direct ESBD users to the guidance on the comptroller's website. The rule as proposed accomplishes this purpose. The rule is adopted without TxDOT's recommended modification.

These amendments are adopted under Government Code, §2155.0012.

The amendment implements Government Code, §2155.083.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 3. CONTRACT MANAGEMENT GUIDE AND TRAINING

### 34 TAC §20.131

The Comptroller of Public Accounts adopts amendments to §20.131, concerning procurement manual and contract management guide, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7023). The rule will not be republished.

This amendment clarifies and simplifies §20.131. In subsection (b), the amendment provides that the comptroller may consult with the state auditor, state agencies, or other stakeholders to receive recommendations for improving the guide. Subsection (c) is proposed for deletion to streamline the rule.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2262.051, which authorizes the comptroller to adopt rules to develop and periodically update a contract management guide.

The amendment implements Government Code, §2262.051.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 34 TAC §20.133

The Comptroller of Public Accounts adopts an amendment to §20.133, concerning procurement training and certification, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7024). The rule will not be republished.

This amendment is to slightly modify the training requirements for purchasers, in accordance with recent changes in the law.

Subsection (c)(1)(C) is amended to change the threshold amount for required training by state agency employees who are purchasers from \$5,000 to \$10,000. This will align the training requirement with the threshold for acquisition without competitive bidding in Government Code, §2155.132(e), as revised by Senate Bill 799, 87th Legislature, 2021.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012 and §2262.051, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services and develop and periodically update a contract management guide.

The amendment implements Government Code, §656.052.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. PROCUREMENT METHODS AND CONTRACT FORMATION DIVISION 2. PROCUREMENT METHODS

### 34 TAC §20.207

The Comptroller of Public Accounts adopts amendments to §20.207, concerning competitive sealed bidding, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7026). The rule will not be republished.

Subsection (a)(1) is amended to replace an outdated method by which a vendor requests a copy of a solicitation with the current methods of using the Electronic State Business Daily and the Centralized Master Bidders List. It incorporates the requirements of Government Code, §2155.075, as amended by Senate Bill 799, 87th Legislature, 2021.

Subsection (a)(10) is amended to remove incorrect or duplicative information. The comptroller may remove vendors from the Centralized Master Bidders List, but such removal is discretionary. This subject matter is covered in §20.107 of this title.

Subsection (a)(9) is amended to delete the instructions for posting and distributing notices of addenda. These instructions are being proposed for relocation into proposed revisions of §20.214 of this title, concerning notice and information posting and distribution and §20.215 of this title, concerning posting time requirements. Subsection (b)(9) is amended to clarify that an agency has discretion to determine whether a bid it receives without addenda is responsive to the solicitation.

Subsection (b)(10) is amended to eliminate an implied conflict with §20.209 of this title, concerning proprietary purchases. Proprietary purchases are expressly permitted by that rule. The revised rule recognizes that proprietary purchases may be accomplished through the competitive sealed bidding process.

Subsection (c) is amended to clarify the requirements for awarding a contract through the competitive sealed bids method.

The rule is amended throughout to clarify that it applies to the comptroller as well as other state agencies with authority to procure goods and services.

The comptroller received comments regarding adoption of the amendment from the Texas Department of Transportation (TxDOT). The proposed amended text of subsection (c)(2) is "In case of tie bids that cannot be resolved by application of one or more preferences described in §20.306 of this title (relating to Preferences), an award may be made by drawing lots." TxDOT recommends that the proposed "may" revert to "shall," to ensure "one certain and objective process across all state agencies to resolve tie bids." TxDOT states that the proposed amendment "removes the requirement to draw lots in the case of tie bids and makes that process permissive."

"The comptroller or other state agency may reject all bids or parts of bids if the rejection serves the state's interest." Government Code, §2156.008(b). Because an agency may choose not to award any contract, and instead cancel the solicitation, the "may" in subsection (c)(2) accurately indicates discretion. "May" creates discretionary authority or grants permission or a power. "Shall" imposes a duty. Government Code, §311.016. Stating that "an award shall be made," as TxDOT suggests, could be construed to create a duty to award a contract. There is no such duty in Texas law.

Furthermore, the text of the rule does not support TxDOT's interpretation of the proposed subsection (c)(2). The rule does not authorize tiebreaking methods that are not objectively fair, as TxDOT suggests. In fact, no other method is authorized. By giving explicit permission to randomly select a winner, the rule excludes non-random selection. See *Bexar County Hospital District v. Crosby*, 327 S.W.2d 445, 447 (Tex. 1959) ("Expresio unius est exclusio alterius.").

Finally, the comptroller's Procurement and Contract Management Guide, Version 2.0, at pp. 80 provides clear guidance on resolving ties. In order to award a contract, the winner must be randomly selected.

Therefore, the rule is adopted without TxDOT's recommended modifications.

These amendments are adopted under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The amendment implements Government Code, §2155.061 and §2155.083.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 34 TAC §20.208

The Comptroller of Public Accounts adopts amendments to §20.208 concerning competitive sealed proposals, with changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7027). The rule will be republished.

These amendments align the procurement rules with Senate Bill 799, 87th Legislature, 2021, eliminate provisions that are not needed in rule, clarify the language used, and align with current best practices for procurement by competitive sealed proposals.

Subsection (a) is amended to revise and clarify when a state agency may follow the competitive sealed proposals procurement method to acquire goods or services. Paragraphs (2) and (3) in the current rule are being deleted because they duplicate language in the amendment of §20.82 regarding delegation of solicitations.

Subsection (b)(1) is amended to clarify publication and solicitation requirements, and to incorporate the requirements of Government Code, §2155.075 as amended by Senate Bill 799, 87th Legislature, 2021.

Subsection (c) is amended to provide that a state agency may not open proposals until the published deadline for submitting a proposal has passed, and shall maintain a list of respondents that submitted a proposal in response to each request for proposal. Subsection (d)(1) - (4) are amended for revision to clarify the requirements for negotiation of proposals.

Subsection (d)(5) is deleted because it merely restates a statutory provision and is not applicable to the vast majority of procurements by competitive sealed proposals. Subsection (e) is amended to clarify requirements for contract award. Subsection (f) is deleted because the release of respondent lists shall be governed by the Public Information Act, as provided in Government Code, Chapter 552. Subsection (g) is deleted because the subject matter of comptroller guidance is more specifically addressed in §20.131, concerning the procurement manual and contract management guide.

The comptroller received comments regarding adoption of the amendment from the Texas Commission on Environmental Quality (TCEQ). TCEQ suggested aligning the rule text regarding competitive range in subsection (d)(1) with the comptroller's Procurement and Contract Management Guide (PCMG). Because the comptroller intends for its rules and the PCMG to provide complementary guidance, TCEQ's suggestion is accepted.

These amendments are adopted under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The amendments implement Government Code, §§2155.061, 2155.075, 2155.083, 2155.264, and Government Code, Chapter 2156, Subchapter C.

#### §20.208. *Competitive Sealed Proposals.*

(a) Availability of method. A state agency may follow the competitive sealed proposals procurement method to acquire goods or services if it determines that competitive sealed bidding and informal competitive bidding are not practical or are disadvantageous to the state.

(b) Solicitation of proposals. A state agency shall:

(1) solicit proposals under this subchapter by making available a request for proposals that contains all the information needed to

submit a responsive proposal, the factors other than price that will be used to determine best value for the state, and the criteria that will be used to evaluate factors other than price; and

(2) give public notice of the request for proposals on the ESBD and distribute notice to the CMBL in the manner provided in this subchapter.

(c) Opening of proposals; respondent list. A state agency may not open proposals until the published deadline for submitting a proposal has passed, and shall maintain a list of respondents that submitted a proposal in response to each request for proposal.

(d) Negotiation of proposals.

(1) A state agency may discuss acceptable or potentially acceptable proposals with a respondent to assess its ability to meet the specifications of the solicitation. A potentially acceptable offer is any offer which the state agency determines to be reasonably considered for award selection. When the division is carrying out a request for proposals, it may invite a state agency to participate in discussions with respondents.

(2) After receiving a proposal but before making an award, a state agency may permit the respondent to revise its proposal one or more times to obtain the best and final offer.

(3) A state agency may not disclose information derived from proposals or discussions with a respondent to any competing respondent prior to award or cancellation of the solicitation.

(4) A state agency shall provide each respondent that submitted an acceptable or potentially acceptable proposal an equal opportunity to discuss and revise proposals.

(e) Contract award.

(1) A state agency may award a contract to the respondent whose proposal offers the best value for the state.

(2) A state agency shall refuse all offers if none is acceptable, and may refuse any offer that is not in the best interest of the state.

(3) A state agency shall determine which proposal offers the best value for the state in accordance with Government Code, §§2155.074, 2155.075 and 2156.125, as applicable.

(4) A state agency shall document and retain the reasons for making an award in the contract file.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 34 TAC §20.211

The Comptroller of Public Accounts adopts amendments to §20.211, concerning small purchases, with changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7029). The rule will be republished.

This amendment would align the maximum value of a small purchase by a state agency in rule with Government Code, §2155.132, as amended by Senate Bill 799, 87th Legislature, 2021. The amendment provides that for purchases of goods which the purchasing agency estimates to be of a total value of less than \$10,000 the purchasing agency shall conduct such procurements in compliance with the processes outlined in the state procurement manual and contract management guide described in §20.131 of this title.

The comptroller received comments regarding adoption of the amendment from the Texas Department of Transportation (TxDOT). TxDOT recommended revising the rule to better align it with Government Code, §2155.132. The comptroller accepts the recommendation, which is consistent with the published purpose of the revision.

These amendments are adopted under Government Code, §2155.0012 and §2262.051, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services and develop and periodically update a contract management guide.

The amendments implement Government Code, §2155.132 and §2262.052.

#### §20.211. *Small Purchases.*

For purchases of goods which the purchasing agency estimates to be of a total value of \$10,000 or less, the purchasing agency shall conduct such procurements in compliance with the processes outlined in the state procurement manual and contract management guide described in §20.131 of this title (relating to Procurement Manual and Contract Management Guide).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 34 TAC §20.214

The Comptroller of Public Accounts adopts amendments to §20.214 concerning notice and information posting requirements, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7030). The rule will not be republished.

These amendments align the procurement rules with Senate Bill 799, 87th Legislature, 2021, eliminate provisions that are not needed in rule, clarify the language used, and align with current best practices. The term "response" is defined in Chapter 20, and the proposed revision will use that term consistent with its definition.

Subsection (a) is amended to provide that each state agency shall post its own notices or solicitations on the Electronic State Business Daily (ESBD). Subsection (b) is revised to more clearly outline the notice requirements for the ESBD. Subsection (b)(2)

is amended for clarity. Subsection (b)(3) is revised to remove information about posting, posting time, and notifications of solicitation addenda. This information has been relocated, including in proposed §20.215 of this Title, concerning Posting Time Requirements. Subsection (b)(4) is deleted because vendors on the Centralized Master Bidders List will no longer have a responsibility to check the Electronic State Business Daily for addenda. Instead, it will be the responsibility of the agency to notify vendors on the Centralized Master Bidders List of each addendum.

New subsection (c) will require advance notice of intent to conduct high-value solicitations to be posted on the Electronic State Business Daily consistent with Government Code, §2262.051, as amended by SB 799, 87 Legislature, 2021.

New subsection (d) clarifies that a requirement to post information online is independent from and in addition to a requirement to distribute information to vendors.

The comptroller received no comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The amendments implement Government Code, §§2155.075, 2155.083, and 2262.051.

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### 34 TAC §20.215

The Comptroller of Public Accounts adopts amendments to §20.215, concerning posting time requirements, with changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7031). The rule will be republished.

Subsections (a) and (b) are amended for clarity, and to incorporate the minimum posting time requirement in Government Code, §2155.083(i). Subsection (c) is amended to address notices of award in addition to notices of cancellation. Subsection (d) is amended to specify the required posting time for solicitation addenda. Current subsection (e) is deleted because it merely restates Government Code, §2155.083(j), and to avoid any implication that the Statewide Procurement Division of the Comptroller has authority to declare a state agency contract void.

The comptroller received comments regarding adoption of the amendment from the Texas Commission on Environmental Quality and the Texas Department of Transportation. Each agency asked to clarify the meaning of the last sentence of proposed subsection (d), which sentence sets a minimum

posting time for addenda to solicitations. Because the addendum merges with and becomes part of the solicitation, the comptroller has determined that the minimum posting time in subsection (a) also addresses the minimum posting time for addenda. Because the last sentence of proposed subsection (d) is surplus, and to avoid any confusion, it is not adopted.

The comptroller also received comments regarding adoption of the amendment from the Health and Human Services Commission (HHSC). HHSC noted that the rule provides significant flexibility for agencies, and suggested that the rule should instead limit agencies' discretion regarding when and for how long to extend the due date for responses to a solicitation after posting an addendum. HHSC asserted that an agency's decision not to extend a solicitation may provide a basis for vendor protests, which HHSC would prefer to avoid. HHSC did not suggest alternate rule language.

The comptroller understands that rigid guidelines could eliminate one basis for vendors to complain. If the rule stated, for example, that responses must be due exactly 14 days after an addendum is posted, a vendor could not protest that the agency unreasonably limited its time to respond. However, such a specific rule would be inappropriate for many situations. A vendor has no need to revise its response to account for an addendum that merely answers a question by providing a reference to material already contained in the original solicitation. Therefore, a 14-day extension following such an addendum would only prolong the procurement process, not improve it. On the other hand, 14 days could be insufficient for a vendor to produce custom sample goods that are required by an addendum. A 14-day extension would be unreasonably short, in that case. A rigid rule cannot account for every factor that may be relevant to a particular solicitation addendum. Therefore, the Comptroller declines to modify the rule in response to HHSC's suggestion. The comptroller advises agencies to err on the side of extending due dates, and to document the rationale for such decisions.

The comptroller has revised the second sentence of subsection (d) for clarity. This revision does not change the meaning of the rule.

These amendments are adopted under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods.

The amendments implement Government Code, §2155.083.

#### §20.215. *Posting Time Requirements.*

(a) Entire solicitation. If the state agency posts the entire solicitation package, including attachments, the solicitation must be posted until the latest of:

(1) 14 calendar days after the date the solicitation package is first posted; or

(2) the date the state agency will no longer accept responses, which must be at least 14 calendar days after the date the solicitation package is first posted.

(b) Notice of solicitation. If documents or attachments related to the solicitation must be obtained from another source, a notice of solicitation must be posted until the latest of:

(1) 21 calendar days after the date the notice is first posted; or

(2) the date the state agency will no longer accept responses, which must be at least 21 calendar days after the date the notice is first posted.

(c) Notice of award or cancellation. If the state agency awards the contract or decides not to make the procurement, the state agency must post a notice to indicate the effective date of the cancellation or award within two business days of canceling or awarding the solicitation.

(d) Addenda or notices of addenda. Each addendum to a solicitation must be posted no later than the next business day after it was released to any potential bidder. If in the state agency's judgment, a bidder may need to adjust its response to account for information contained in an addendum, the state agency shall reasonably extend the time and date after which it will no longer accept responses.

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## SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

### DIVISION 2. STATEWIDE PROCUREMENT DIVISION SERVICES - TRAVEL AND VEHICLES

#### 34 TAC §20.406

The Comptroller of Public Accounts adopts amendments to §20.406, concerning purpose and applicability, with changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7032). The rule will be republished.

This rule is amended to add qualified cooperative entity to the list of the eligible entities that can use comptroller's contract travel services to be consistent with Government Code, §2171.055, as amended by Senate Bill 1122, 87th Legislature, 2021.

Senate Bill 1122 introduced the definition of qualified cooperative entity and its authorization to participate in the comptroller's contracts for travel services when engaged in official business. The inclusion of qualified cooperative entity aligns comptroller's rules with statute and clarifies applicable rules to travel services participants.

The amendment to subsection (b)(2) adds qualified cooperative entities as authorized participants in the comptroller's contracts for travel services.

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts the rule with a clerical edit to subsection (a), to correct the omission of a hyphen from "internet-based reservation and ticketing."

The amendments are adopted under the authority of Government Code, §2171.002.

The amendments implement Government Code, §2171.055.

§20.406. *Purpose and Applicability.*

(a) Purpose. This subchapter governs the use of contract travel services and state travel credit cards by state officials and employees and other eligible persons. Contract travel services may include state credit cards, travel agencies, airlines, vehicles, internet-based reservation and ticketing, lodging and other modes and necessities of state business related travel. The purpose of this subchapter is to encourage travelers to obtain the lowest overall cost of travel services. These rules do not alter, amend or affect the requirements in Government Code, Chapter 660 relating to travel or the comptroller's statutes and rules.

(b) Applicability. This subsection defines the persons and entities eligible to use contract travel services.

(1) State agencies. State agency officials and employees, in the executive branch, shall use the contract travel services as required by this subchapter whenever those services provide the most efficient travel resulting in the total lowest cost. State agencies may and are encouraged to purchase travel services at rates lower than the contract travel services rates.

(2) Other governmental entities. Officers and employees of the following entities may, but are not required to, participate in the travel services pursuant to this subchapter. These entities may use contract travel services upon approval by the comptroller of their application for the use of contract travel services:

(A) an institution of higher education as defined in Education Code, §61.003 when the entity uses travel agency services or when the services are purchased from funds other than general revenue or education or general funds as defined by Education Code, §51.009;

(B) Employees Retirement System when the travel is paid from other than general revenue funds;

(C) counties;

(D) municipalities;

(E) public junior colleges;

(F) school districts;

(G) emergency communication districts;

(H) qualified cooperative entity as the term is defined under Government Code, § 2171.055; and

(I) the supreme court, the court of criminal appeals, the courts of appeals, and other entities in the judicial branch.

(c) Official government business. Contract travel services shall be used only for official governmental business, unless the travel services contractor offers the same services for personal use. No contractor is required to allow the use of contract travel services for other than official governmental business.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER F. CONTRACT MANAGEMENT**  
**DIVISION 1. CONTRACT ADMINISTRATION**  
**34 TAC §20.487**

The Comptroller of Public Accounts adopts amendments to §20.487, regarding invoicing standards, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7033). The rule will not be republished.

The amendment to subsection (a) clarifies the contractor's responsibility to facilitate payment by submitting a detailed invoice. The amendment in subsection (b) provides that a state agency must notify a vendor of an error or disputed amount in an invoice submitted for payment no later than the 21st day after the agency receives the invoice, and shall include in the notice a detailed statement of the amount of the invoice which is disputed. The amendment also provides that state agencies may withhold up to 110% of any disputed amount from payment to the contractor. This aligns the rule with Government Code §2251.042 as amended by House Bill 1476, 87th Legislature, 2021.

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under the authority of Government Code, §2251.003, to administer the state system of payments for goods and services.

The amendments implement Government Code, Chapter 2251.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Don Neal  
General Counsel Operations and Support Legal Services  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-2220



**DIVISION 3. PROTESTS AND APPEALS**  
**34 TAC §20.535**

The Comptroller of Public Accounts adopts an amendment to §20.535, concerning filing requirements, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7034). The rule will not be republished.

The amendment will make §20.535 consistent with Government Code, §2262.055. Currently, §20.535 permits protests to be filed when a grade of C or lower is posted in the vendor performance tracking system. However, Government Code, §2262.055 allows only vendors who receive a grade of lower than a C to protest. This amendment to subsection (b)(4) clarifies that only vendor grades of lower than a C may be protested, as provided in Government Code, §2262.055.

The comptroller did not receive any comments regarding adoption of the amendment.

The amendment is adopted under the authority of Government Code, §2262.055(b).

The amendment implements Government Code, §2262.055.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER G. DEBARMENT**  
**34 TAC §20.588**

The Comptroller of Public Accounts adopts new §20.588, concerning effect of debarment, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7035). The rule will not be republished.

The new section replaces former §20.82(f), which is simultaneously being deleted. New §20.588 is grouped with other rules concerning debarment in Subchapter G of Chapter 20. This promotes uniformity of application and compliance by state agencies. The new §20.588 requires state agencies to ensure that vendors currently debarred by the comptroller do not participate in state contracting and requires state agencies to establish procedures to implement this requirement. The rule also provides that when a vendor is debarred, a state agency must terminate its contracts with the debarred vendor as soon as practicable considering such factors as a need to procure replacement goods and services from an alternate vendor.

The comptroller received comments regarding adoption of the amendment from the Texas Commission on Environmental Quality (TCEQ). TCEQ suggested that agencies should have discretion to continue a contract with the debarred vendor when the vendor is performing a contract adequately, and the work cannot be easily reprocurd. TCEQ requested an explicit option to exercise contractual renewals and extensions to extend a relationship with a debarred vendor. In the alternative, TCEQ suggested that it is not necessary to address the effect of debarment in rule.

Debarment is the administrative sanction of excluding a vendor from participation in state contracting, pursuant to Government Code, §2155.077(a). The comptroller is the debarment author-

ity for the state, pursuant to Government Code, §2155.077(a). The decision to debar a vendor is made in the best interest of the state, such as when a contractor perpetrates fraud on the government or fails to provide promised disaster relief, pursuant to Government Code, §§2155.077(a)(2), 2155.077(a-1). The comptroller considers the seriousness of the vendor's conduct and damage to the state's interests in issuing debarments, pursuant to Government Code §2155.077(b).

To "participate" means to take part, or have a role in something. Delivering goods or performing services, and receiving payment in exchange, is the essence of participation in state contracts. See Government Code, §2155.0061(a), which prohibits accepting a bid or awarding a contract that would involve "participation" of a person convicted of human trafficking. See also Government Code, §2155.073, requiring the comptroller to "foster participation" in state contracting by small business. A vendor that performs and is paid under a state contract is "participating in state contracts" within the meaning of §2155.077(a). Extending the contract of a debarred vendor, and thus extending its participation in state contracts, is generally inconsistent with the statutory intent of §2155.077.

To say that debarment only affects eligibility for award would be a misinterpretation of §2155.077. There are many statutory prohibitions that apply only at the time of contract award. They use phrases like "a state agency may not accept a bid or award a contract" (Government Code, §§2155.004(a), 2155.006, and 2155.0061); "a governmental entity may not enter into a governmental contract" (Government Code §2252.152); an "agency may not enter into a written contract" (Government Code, §2252.903(b)); or "a governmental entity may not enter into a contract" (Government Code, §2271.002 and §2274.0102). If the Legislature intended debarment to impact contract award only, it would have used similar language. It did not. Section 2155.077 limits "participation" in contracts, rather than awarding or entering a contract. Therefore, the policy of terminating debarred vendors implements debarment as the Legislature intended.

The rule accounts for an agency's need to procure alternate sources of goods and services. It does not require immediate termination; instead, an agency shall terminate a debarred vendor "as soon as practicable." Where it is very difficult or impossible to fulfill needs from an alternate source, an agency may have no choice but to continue its relationship with the vendor. However, that the vendor is performing adequately will not suffice as the sole justification to continue the contractual relationship beyond what is practicable.

Therefore, the rule is adopted without TCEQ's recommended modifications.

Section 20.588 is adopted under Government Code, §2155.0012, which authorizes the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The new section implements Government Code, §2155.077

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER I. STATE GRANT FUNDS MANAGEMENT

### 34 TAC §20.600

The Comptroller of Public Accounts adopts new §20.600, concerning denial of state grant funds for local entities that prohibit or discourage enforcement of public camping ban, without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7035). The rule will not be republished.

The new section will be organized in new Subchapter I, titled State Grant Funds Management.

Section 20.600 implements the requirements of Local Government Code, Chapter 364, as enacted by House Bill 1925 of the 87th Texas Legislature, 2021. The additions require state agencies to follow the new requirements concerning the denial of state grant funds to local entities that prohibit or discourage the enforcement of any public camping ban. The additions further mandate that local entities must disclose their status under this chapter when applying for state grant funds.

The comptroller did not receive any comments regarding adoption of the amendment.

The new section is adopted under Local Government Code, §364.004(b), which authorizes the comptroller to adopt rules to implement Chapter 364.

The new section implements Local Government Code, §364.004, which describes new requirements applying to the distribution of state grant funds to local entities with respect to violations of Government Code, §364.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES  
SUBCHAPTER I. RELEASE OF DRIVER  
RECORD INFORMATION

**37 TAC §15.149**

The Texas Department of Public Safety (the department) adopts new §15.149, concerning Deleting Personal Information When Not An Authorized Recipient. This rule is adopted without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 888) and will not be republished.

The Eighty-seventh Texas Legislature, enacted Senate Bill 15, which amended Texas Transportation Code, §730.0121, requiring the department by rule to require a requestor to delete from the requestor's records personal information received from the agency under this chapter if the requestor becomes aware that the requestor is not an authorized recipient of that information.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code and §730.0121.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



CHAPTER 16. COMMERCIAL DRIVER  
LICENSE  
SUBCHAPTER B. APPLICATION  
REQUIREMENTS AND EXAMINATIONS

**37 TAC §16.22**

The Texas Department of Public Safety (the department) adopts the repeal of §16.22, concerning Substitute Experience for Commercial Driver License (CDL) Driving Skills Exam. This repeal is adopted without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 889) and will not be republished.

This rule is being repealed in conjunction with amendments §16.26 and §16.29 as all relevant information required by 49 Code of Federal Regulations (CFR) Part 383.77 is being incorporated into these sections.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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**37 TAC §16.26**

The Texas Department of Public Safety (the department) adopts amendments to §16.26, concerning Written Exams Required. This rule is adopted without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 890) and will not be republished.

This rule requires revisions to comply with 49 Code of Federal Regulations (CFR) Part 383.77 related to the substitution and waiver of CDL written exams for drivers with military CMV experience.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



**37 TAC §16.29**

The Texas Department of Public Safety (the department) adopts amendments to §16.29, concerning Waivers from Skills Exam. This rule is adopted without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 891) and will not be republished.



This rule requires revisions to comply with 49 Code of Federal Regulations (CFR) Part 383.77 related to the substitution skills exams for drivers with military CMV experience.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Public Safety

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 20. TEXAS WORKFORCE COMMISSION

#### CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER D. EMPLOYEE BENEFITS

##### 40 TAC §800.150, §800.151

The Texas Workforce Commission (TWC) adopts the following new subchapter to Chapter 800, relating to General Administration:

Subchapter D. Employee Benefits, §800.150 and §800.151

New §800.150 and §800.151 are adopted *without* changes, to the proposed text as published in the January 28, 2022, issue of the *Texas Register* (47 TexReg 253), and, therefore the adopted rule text will not be published.

##### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of new Chapter 800, Subchapter D is to establish administrative rules relating to the operation of TWC's sick and family leave pools.

Senate Bill 248 from the 73rd Texas Legislature, Regular Session (1993) (codified as Texas Government Code, §§661.001 - 661.008), established the sick leave pool. The sick leave pool is for eligible state employees who have exhausted their sick and personal leave to cover time-and-leave absences for catastrophic and/or life-threatening illnesses and injuries for either the employee or his or her approved family member.

House Bill (HB) 2063 from the 87th Texas Legislature, Regular Session (2021) (codified as Texas Government Code, §§661.021 - 661.028), established the family leave pool. The

family leave pool provides eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and for caring for a seriously ill family member of the employee, including pandemic-related illnesses or complications caused by a pandemic.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

##### SUBCHAPTER D. EMPLOYEE BENEFITS

TWC adopts new Subchapter D, as follows:

##### §800.150. Sick Leave Pool

New §800.150 provides eligible employees with additional paid sick leave in documented cases of a catastrophic or life-threatening illness or injury to the employee or the employee's immediate family member.

##### §800.151. Family Leave Pool

New §800.151 provides eligible employees with additional family leave if they have exhausted all eligible compensatory, discretionary, sick, and vacation leave due to certain situations, and have provided proper documentation for using the family leave pool in extenuating circumstances, such as an ongoing pandemic that would include providing care for a family member. The family leave pool further provides eligible employees with the ability to apply for leave time and more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement; or caring for a seriously ill family member of the employee, including pandemic-related illnesses or complications caused by a pandemic.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

#### PART III. PUBLIC COMMENTS

The public comment closed on February 28, 2022. No comments were received.

#### PART IV.

##### STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## CHAPTER 804. JOBS AND EDUCATION FOR TEXANS (JET) GRANT PROGRAM

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 804 relating to the Jobs and Education for Texans (JET) Grant Program:

Subchapter A. Definitions, §804.1

Subchapter B. Advisory Board Composition, Meeting Guidelines, §804.12 and §804.13

Subchapter C. Grant Program, §804.21 and §804.24

Subchapter D. Grants to Educational Institutions for Career and Technical Education Programs, §804.41

TWC adopts §804.41 *with changes* to the proposed text as published in the January 28, 2022, issue of the *Texas Register* (47 TexReg 255), and, therefore the adopted rule text will be published. TWC adopts §§804.1, 804.12, 804.13, 804.21, and 804.24 *without changes* to the proposed text as published and the adopted rule text will not be published.

### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of Chapter 804 is to provide the establishment and operational procedures of the JET Grant Program, administered by TWC. Formerly under the direction of the Texas Comptroller of Public Accounts, oversight of the JET Grant Program was transferred to TWC through House Bill (HB) 3062, passed by the 84th Texas Legislature, Regular Session (2015), and the Commission adopted program rules in 2016.

The 85th Texas Legislature, Regular Session (2017), passed HB 2431, which amended Texas Education Code, §314.001 to include "public state colleges," as defined by Texas Education Code, §61.003, to the list of eligible entities to apply and receive JET grant funds.

The 87th Texas Legislature, Regular Session (2021), passed Senate Bill (SB) 346 and HB 4279, which both expanded participant eligibility in the JET Grant Program. SB 346 included the addition of "open-enrollment charter schools" to the list of eligible entities for JET grants under Texas Education Code, §134.004. HB 4279 removed the term "independent" from "independent school districts" throughout Texas Education Code, §134.004, and expanded the definition of eligible school districts to include "the Windham School District."

### 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. DEFINITIONS

TWC adopts the following amendments to Subchapter A:

##### §804.1. Definitions

Section 804.1(4) is amended to add "or public state colleges" to the definition of "Certificate or degree completion" in order to include all of the entities in which an individual could receive a certificate or degree completion.

New §804.1(5) defines "Charter school" as a Texas public school operated by a charter holder under an open-enrollment charter granted pursuant to Texas Education Code, §12.101. The subsequent definitions were renumbered accordingly.

Section 804.1(8) is removed because "ISD" is no longer needed in Chapter 804 due to amendments made to Texas Education Code, §134.004 by HB 4279.

New §804.1(12) defines "Public state college" as Lamar State College--Orange, Lamar State College--Port Arthur, or Lamar Institute of Technology, per Texas Education Code, §61.003. The subsequent definition was renumbered accordingly.

New §804.1(14) defines "School district" as independent school districts or the Windham School District in accordance with Texas Education Code, §134.004.

#### SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

TWC adopts the following amendments to Subchapter B:

##### §804.12. Meetings Required

Section 804.12(a) currently explains the requirements of the advisory board to meet at least once a quarter to review applications and recommends awarding grants to "public junior colleges, public technical institutes, and ISDs." TWC amends the list of potential grant recipients to add "public state colleges, charter schools, and school districts" and remove "ISDs" to reflect the changes implemented by HB 2431, HB 4279, and SB 346.

##### §804.13. General Advisory Board Responsibilities

Section 804.13(1) currently states that the advisory board is responsible for providing advice and recommendations on the manner in which "public junior colleges, public technical institutes, and ISDs apply for JET grants." TWC amends the list of potential grant recipients to add "public state colleges, charter schools, and school districts" and remove "ISDs" to reflect the changes implemented by HB 2431, HB 4279, and SB 346.

#### SUBCHAPTER C. GRANT PROGRAM

TWC adopts the following amendments to Subchapter C:

##### §804.21. General Statement of Purpose

Section 804.21 currently provides the JET general statement of purpose to "award grants from the JET fund for the development of career and technical education programs at public junior colleges, public technical institutes, and ISDs that meet the requirements of Texas Education Code, §134.006 and §134.007." TWC proposes amending the list of potential grant recipients to add "public state colleges, charter schools, and school districts" and remove "ISDs" to reflect the changes implemented by HB 2431, HB 4279, and SB 346.

##### §804.24. Reporting Requirements

Section 804.24 currently states that a "public junior college, public technical institute, or ISD" that receives a JET grant is required to comply with all reporting requirements of the contract established by TWC. TWC amends the list of grant recipients to add "public state college, charter school, or school district" and remove "ISD" to reflect the changes implemented by HB 2431, HB 4279, and SB 346.

#### SUBCHAPTER D. GRANTS TO EDUCATIONAL INSTITUTIONS FOR CAREER AND TECHNICAL EDUCATION PROGRAMS

TWC adopts the following amendments to Subchapter D:

##### §804.41. Grants for Career and Technical Education Programs

Section 804.41(a) currently specifies that Subchapter D is applicable to "JET awards to public junior colleges, public technical institutes, and ISDs for the development of career and technical education programs that meet the requirements of Texas Education Code, §134.006 and §134.007 and Texas Government Code, §403.356." TWC amends the list of grant recipients to add "public state colleges, charter schools, and school districts," and remove "ISDs" to reflect the changes implemented by HB 2431, HB 4279, and SB 346. TWC also amends the section to remove the reference to "Texas Government Code, §403.356." Texas Government Code, §403.356, contained provisions relating to the operation of the JET Grant Program under the Texas Comptroller of Public Accounts and was repealed by HB 437, 83rd Texas Legislature, Regular Session (2013).

New §804.41(c)(3) adds the ability for TWC to consider whether an applicant offers new career and technical educational opportunities not previously available to students enrolled at any campus in the Windham School District when evaluating applications for funding, in order to include the Windham School District as an eligible entity.

Section 804.41(c)(4), formerly §804.41(c)(3), is amended to add "or public state colleges" in order to include all of the eligible entities that school districts can partner with.

At adoption, TWC amended §804.41(d)(1) to change "college" to "grant recipient" to align with the broadened list of eligible grant recipients.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

#### PART III. PUBLIC COMMENTS

The public comment closed on February 28, 2022. No comments were received.

### SUBCHAPTER A. DEFINITIONS

#### 40 TAC §804.1

##### PART IV. STATUORY AUTHORITY

The rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and Texas Education Code, §134.008, which requires TWC adopt rules necessary for the administration of Texas Education Code, Chapter 134.

The adopted rule implements HB 2431, HB 4279, and SB 346 and the requirements set out in Texas Education Code, Chapter 134.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman

General Counsel

Texas Workforce Commission

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### SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

#### 40 TAC §804.12, §804.13

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and Texas Education Code, §134.008, which requires TWC adopt rules necessary for the administration of Texas Education Code, Chapter 134.

The adopted rules implement HB 2431, HB 4279, and SB 346 and the requirements set out in Texas Education Code, Chapter 134.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman

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Texas Workforce Commission

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### SUBCHAPTER C. GRANT PROGRAM

#### 40 TAC §804.21, §804.24

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and Texas Education Code, §134.008, which requires TWC adopt rules necessary for the administration of Texas Education Code, Chapter 134.

The adopted rules implement HB 2431, HB 4279, and SB 346 and the requirements set out in Texas Education Code, Chapter 134.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman

General Counsel

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SUBCHAPTER D. GRANTS TO  
EDUCATIONAL INSTITUTIONS FOR  
CAREER AND TECHNICAL EDUCATION  
PROGRAMS

**40 TAC §804.41**

The rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and Texas Education Code, §134.008, which requires TWC adopt rules necessary for the administration of Texas Education Code, Chapter 134.

The adopted rule implements HB 2431, HB 4279, and SB 346 and the requirements set out in Texas Education Code, Chapter 134.

§804.41. *Grants for Career and Technical Education Programs.*

(a) This subchapter is applicable to JET awards to public junior colleges, public technical institutes, public state colleges, charter schools, and school districts for the development of career and technical education programs that meet the requirements of Texas Education Code, §134.006 and §134.007.

(b) A grant received under this subchapter may be used only:

(1) to support courses or programs that prepare students for career employment in occupations that are identified by local businesses as being in high demand;

(2) to finance the initial costs of career and technical education courses or program development, including the costs of purchasing equipment, and other expenses associated with the development of an appropriate course; and

(3) to finance a career and technical education course or program that leads to a license, certificate, or postsecondary degree.

(c) In awarding a grant under this subchapter, the Agency shall primarily consider the potential economic returns to the state from the development of the career and technical education course or program. The Agency may also consider whether the course or program:

(1) is part of a new, emerging industry or high-demand occupation;

(2) offers new or expanded dual-credit career and technical educational opportunities in public high schools;

(3) offers new career and technical educational opportunities not previously available to students enrolled at any campus in the Windham School District; or

(4) is provided in cooperation with other public junior colleges, public technical institutes, or public state colleges across existing service areas.

(d) A grant recipient shall provide the matching funds as identified in its application.

(1) Matching funds may be obtained from any source available to the grant recipient, including industry consortia, community or foundation grants, individual contributions, and local governmental agency operating funds.

(2) A grant recipient's matching share may consist of one or more of the following contributions:

(A) cash;

- (B) equipment, equipment use, materials, or supplies;
- (C) personnel or curriculum development cost; and/or
- (D) administrative costs that are directly attributable to the project.

(3) The matching funds must be expended on the same project for which the grant funds are provided and valued in a manner acceptable or as determined by the Agency.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Workforce Commission

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**TITLE 43. TRANSPORTATION**

**PART 10. TEXAS DEPARTMENT OF  
MOTOR VEHICLES**

**CHAPTER 208. EMPLOYMENT PRACTICES  
SUBCHAPTER C. FAMILY LEAVE POOL**

**43 TAC §208.13**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts new section 43 TAC §208.13, concerning a family leave pool. The new section is necessary to implement House Bill 2063, 87th Legislature, Regular Session (2021), which amended Government Code Chapter 661 by adding new Subchapter A-1, requiring all state agencies to create and administer an employee family leave pool. Under House Bill 2063, all state agencies must adopt rules and prescribe procedures relating to the operation of the agency family leave pool.

The department adopts new §208.13 without changes to the proposed text as published in the December 17, 2021, issue of the *Texas Register* (46 TexReg 8585). The rule will not be republished.

**REASONED JUSTIFICATION.** New §208.13 is added to implement House Bill 2063. The new section will provide eligible department employees more flexibility in bonding with and caring for their children during a child's first year following birth, adoption, or foster placement, and for caring for a seriously ill family member of the employee. The pool will allow employees to voluntarily transfer sick or vacation leave earned while also allowing employees to apply for leave time from the pool.

New §208.13 describes the purpose of the family leave pool.

New §208.13(1) designates the human resources director as the department administrator of the family leave pool.

New §208.13(2) states that the pool administrator, with the advice and consent of the executive director, will establish operating procedures for the family leave pool which are consistent

with Government Code, Chapter 661, Subchapter A-1 (relating to State Employee Family Leave Pool).

New §208.13(3) states that the adopted procedures related to the operation of the family leave pool will be published in the department's Human Resources Manual.

New §208.13(4) requires all donations to the family leave pool be voluntary.

**SUMMARY OF COMMENTS.**

No comments on the proposed new §208.13 were received.

**STATUTORY AUTHORITY.** The department adopts new §208.13 under Transportation §1002.001 and Government Code §661.022(c).

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

Government Code §661.022(c) requires the board to adopt rules related to the operation of the department's family leave pool.

**CROSS REFERENCE TO STATUTE.** Government Code §661.021-661.028.

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 April 18, 2022.

TRD-202201445

Aline Aucoin

General Counsel

Texas Department of Motor Vehicles

Effective date: May 8, 2022

Proposal publication date: December 17, 2021

For further information, please call: (512) 465-4206





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Animal Health Commission

### Title 4, Part 2

The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 31, concerning Anthrax, in its entirety, in accordance with Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-202201466

Myra Sines

Chief of Staff

Texas Animal Health Commission

Filed: April 18, 2022



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 34, concerning Veterinary Biologics, in its entirety, in accordance with Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-202201467

Myra Sines

Chief of Staff

Texas Animal Health Commission

Filed: April 18, 2022



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 35, concerning Brucellosis, in its entirety, in accordance with Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-202201468

Myra Sines

Chief of Staff

Texas Animal Health Commission

Filed: April 18, 2022



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 37, concerning Screwworms, in its entirety, in accordance with Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-202201469

Myra Sines

Chief of Staff

Texas Animal Health Commission

Filed: April 18, 2022



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 39, concerning Scabies, in its entirety, in accordance with Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-202201470  
Myra Sines  
Chief of Staff  
Texas Animal Health Commission  
Filed: April 18, 2022



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 49, concerning Equine, in its entirety, in accordance with Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-202201471  
Myra Sines  
Chief of Staff  
Texas Animal Health Commission  
Filed: April 18, 2022



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 58, concerning Emergency Response and Management, in its entirety, in accordance with Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-202201472  
Myra Sines  
Chief of Staff  
Texas Animal Health Commission  
Filed: April 18, 2022



Texas Department of Licensing and Regulation  
**Title 16, Part 4**

The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 16, Part 4, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

### Rule Chapters Under Review

- Chapter 117, Massage Therapy
- Chapter 121, Behavior Analyst
- Chapter 130, Podiatric Medicine Program

During the review, the Department will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Department will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Department procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules> (select the appropriate chapter name for your comment); 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*.

Any proposed changes to the rules in these chapters as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment before final adoption by the Texas Commission of Licensing and Regulation, the Department's governing body, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202201503  
Brad Bowman  
General Counsel  
Texas Department of Licensing and Regulation  
Filed: April 20, 2022



### Department of State Health Services

#### Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Health Services (DSHS), proposes to review and consider for re-adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1 of the Texas Administrative Code:

- Chapter 101, Tobacco
  - §101.1 - Purpose
  - §101.2 - Definitions
  - §101.3 - General Requirements for Annual Reports by Manufacturers
  - §101.4 - Ingredient Reporting Requirements
  - §101.5 - Cigarette Nicotine Yield Rating Reporting Requirements
  - §101.6 - Tobacco Products--Excluding Cigars, Nicotine Reporting Requirements
  - §101.7 - Security of Report Information
  - §101.10 - Public Information



This review is conducted pursuant to the requirements of the Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will consider whether these rules should be repealed, readopted, or readopted with amendments.

Comments on the review of Chapter 101, Tobacco, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1 of the Texas Administrative Code or on the Secretary of State's website at

[https://texreg.sos.state.tx.us/public/readtac\\$ext.View-TAC?tac\\_view=4&ti=25&pt=1&ch=101&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.View-TAC?tac_view=4&ti=25&pt=1&ch=101&rl=Y)

TRD-202201429

Mahan Farman-Farmaian

Director, Rules Coordination Office

Department of State Health Services

Filed: April 14, 2022



## Adopted Rule Reviews

Texas Department of Housing and Community Affairs

### Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) adopts its rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, 10 TAC §1.4, Protest Procedures for Contractors. The purpose of the action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

The Department has determined that there continues to be a need for this rule, which is to comply with 34 TAC Chapter 20, Subchapter F, Division 3, the rules of the Texas Comptroller of Public Accounts addressing procurement, which require state agencies to adopt protest procedures consistent with the Comptroller's procedures. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule has been readopted which will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

SUMMARY OF PUBLIC COMMENT. Comments or questions about the rule review were accepted from February 25, 2022, through March 25, 2022. No comment was received.

This concludes the review of this rule in accordance with Texas Government Code §2001.039.

TRD-202201461

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: April 18, 2022



The Texas Department of Housing and Community Affairs (the Department) files this adoption of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, 10 TAC §1.6, Historically Underutilized Businesses. The purpose of the ac-

tion is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to encourage the use of Historically Underutilized Businesses (HUBs) in the Department's procurement processes and to comply with Tex. Gov't Code §2161.003, which requires that the Department adopt the Texas Comptroller of Public Accounts HUB Program rules. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule has been readopted and will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

SUMMARY PUBLIC COMMENT. Comments or questions regarding the rule review were open to be submitted from February 25, 2022, through March 25, 2022. No comment was received.

This concludes the review of this rule in accordance with Texas Government Code §2001.039.

TRD-202201462

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: April 18, 2022



The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.12 Negotiated Rulemaking. The purpose of the action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to satisfy Tex. Gov't Code, §2306.082, which requires the Department to encourage negotiated rulemaking. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule has been readopted, which will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

SUMMARY OF PUBLIC COMMENT. Comments or questions in response to this notice of rule review could be submitted from February 25, 2022, through March 25, 2022. No comments were received.

This concludes the review of this rule in accordance with Texas Government Code §2001.039.

TRD-202201463

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: April 18, 2022



The Texas Department of Housing and Community Affairs (the Department) adopts its rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.17, Alternative Dispute Resolution. The purpose of the action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to satisfy Tex. Gov't Code, §2306.082, which requires the Department to encourage alternative dispute resolution procedures. The Department has also determined that no changes

to this rule as currently in effect are necessary. This rule has been read-opted which will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

SUMMARY OF PUBLIC COMMENT. Comments or questions about the rule review were accepted from February 25, 2022, through March 25, 2022. No comment was received.

This concludes the review of this rule in accordance with Texas Government Code §2001.039.

TRD-202201464  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 18, 2022



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 19 TAC §21.52(a)(2)(C)

**TEXAS FIRST EARLY HIGH SCHOOL COMPLETION PROGRAM  
Subject Area Assessments and Benchmarks**

ASSESSMENT INSTRUMENT	ENGLISH SUBJECT AREA	MS	MATH SUBJECT AREA	MS	SCIENCE SUBJECT AREA	MS	SOCIAL STUDIES SUBJECT AREA	MS	LANGUAGE OTHER THAN ENGLISH SUBJECT AREA	MS
SAT	EBRW	480	Math	530	SAT ST	700	SAT ST	690	SAT ST	730
ACT	English	18	Math	22	Science	23	Reading	22	--	--
PSAT/NMSQT	EBRW	460	Math	510	--	--	--	--	--	--
ACT - Plan	English	19	Math	19	Science	20	Reading	18	--	--
AP	English	3	Math	3	AP ST	3	AP ST	3	AP ST	3
CLEP	English	50	Math	50	CLEP ST	50	CLEP ST	50	CLEP ST	50
IB	Language/Literature	4	Math	4	Sciences ST	4	Individuals and Societies ST	4	Language Acquisition ST	4
TSIA	Reading	351 +4E	Math	450	--	--	--	--	--	--
TSIA2	ELAR	945 ± 5E	Math	950	--	--	--	--	--	--
GED	English	165	Math	165	Science	165	Social Studies	165	--	--

Gray Column indicates minimum score (MS)

ST = Subject Test

E = Essay

**Figure: 30 TAC §112.112(b)**

Production Units 1 and 2 Furnaces On-line	Production Unit 3 Furnaces On-line	SO <sub>2</sub> Emission Limit (lb/hr) for EPN 13A, Flare 4, EPN 7A, and EPN 12 A	SO <sub>2</sub> Emission Limit (lb/hr) for EPN 13A or Flare 4	SO <sub>2</sub> Emission Limit (lb/hr) for EPN 7A and EPN 12A	SO <sub>2</sub> Emission Limit (lb/hr) for EPN 12A
9	4	1,355.00	1,138.00	407.00	146.00
9	3	1,253.38	1,052.65	376.48	109.50
9	2	1,151.75	967.30	345.95	73.00
9	1	1,050.13	881.95	315.43	36.50
9	0	948.50	796.60	284.90	0.00
8	4	1,249.61	1,049.49	375.34	146.00
8	3	1,147.99	964.14	344.82	109.50
8	2	1,046.36	878.79	314.29	73.00
8	1	944.74	793.44	283.77	36.50
8	0	843.11	708.09	253.24	0.00
7	4	1,144.22	960.98	343.69	146.00
7	3	1,042.60	875.63	313.16	109.50
7	2	940.97	790.28	282.64	73.00
7	1	839.35	704.93	252.11	36.50
7	0	737.72	619.58	221.59	0.00
6	4	1,038.83	872.47	312.03	146.00
6	3	937.21	787.12	281.51	109.50
6	2	835.58	701.77	250.98	73.00
6	1	733.96	616.42	220.46	36.50
6	0	632.33	531.07	189.93	0.00
5	4	933.44	783.96	280.38	146.00
5	3	831.82	698.61	249.85	109.50
5	2	730.19	613.26	219.33	73.00
5	1	628.57	527.91	188.80	36.50
5	0	526.94	442.56	158.28	0.00
4	4	828.06	695.44	248.72	146.00
4	3	726.43	610.09	218.20	109.50
4	2	624.81	524.74	187.67	73.00
4	1	523.18	439.39	157.15	36.50
4	0	421.56	354.04	126.62	0.00
3	4	722.67	606.93	217.07	146.00
3	3	621.04	521.58	186.54	109.50
3	2	519.42	436.23	156.02	73.00
3	1	417.79	350.88	125.49	36.50
3	0	316.17	265.53	94.97	0.00
2	4	617.28	518.42	185.41	146.00
2	3	515.65	433.07	154.89	109.50
2	2	414.03	347.72	124.36	73.00
2	1	312.40	262.37	93.84	36.50
2	0	210.78	177.02	63.31	0.00
1	4	511.89	429.91	153.76	146.00
1	3	410.26	344.56	123.23	109.50
1	2	308.64	259.21	92.71	73.00
1	1	207.01	173.86	62.18	36.50

1	0	105.39	88.51	31.66	0.00
0	4	406.50	341.40	122.10	146.00
0	3	304.88	256.05	91.58	109.50
0	2	203.25	170.70	61.05	73.00
0	1	101.63	85.35	30.53	36.50

**Figure: 30 TAC §112.113(a)**

$$\sigma_i = (SI_i - SRB_i) \times 2; \quad i = 1, 2, 3$$

Where:

$\sigma_i$  = emissions of SO<sub>2</sub> expressed in units of lb/hr;

$i$  = the carbon black production unit;

$SI_i$  = the mass rate of sulfur input to production unit  $i$ , expressed in units of lb/hr;

$SRB_i$  = the mass rate of sulfur retained in the carbon black produced by production unit  $i$ , expressed in units of lb/hr; and

2 = the molecular weight ratio of SO<sub>2</sub> to sulfur

**Figure: 30 TAC §112.113(b)**

$$SO_{2,EPN} = \pi \times \sum_{i \in \tau} \sigma_i$$

Parameter	Emission Point Number			
	13A	7A	12A	FLARE 4
$\pi$	$\pi_{incin}$	$\pi_{dryer}$	$\pi_{dryer}$	$\pi_{incin}$
$\tau$	1,2,3	1,2	3	1,2,3

Where:

$SO_{2,EPN}$  = emissions of  $SO_2$  expressed in units of lb/hr for each EPN;

$\pi_{incin}$  and  $\pi_{dryer}$  are the split coefficients from §112.113(4)(E) and (F), respectively, indicating the fraction of tail gas combusted in the Incinerator + HRSG or flare and in dryers, determined through continuous monitoring as required in this subsection.

$i$  = the carbon black production unit;

$\tau$  = the set of carbon black production units contributing carbon black oil furnace tail gas to the applicable EPN; and

$\sigma_i$  = emissions of  $SO_2$  expressed in units of lb/hr;

**Figure: 30 TAC §112.223(h)**

$$SO_2 = (SI - SRB) \times 2$$

Where:

$SO_2$  = mass emissions of  $SO_2$ , expressed in units of lb/hr;

SI = the sulfur input from the carbon black oil feedstock determined by sampling as required by §112.223(2)(A);

SRB = the sulfur retained in the produced carbon black determined by sampling as required by §112.223(c)(B);

2 = the molecular weight ratio of  $SO_2$  to sulfur.

**Figure: 30 TAC §112.243(j)**

$$SO_2 = (SI - SRB) \times 2$$

Where:

SO<sub>2</sub> = mass emissions of SO<sub>2</sub>, expressed in units of lb/hr;

SI = the sulfur input from the carbon black oil feedstock determined by sampling as required by §112.243(2)(A);

SRB = the sulfur retained in the produced carbon black determined by sampling as required by §112.243(2)(B);

2 = the molecular weight ratio of SO<sub>2</sub> to sulfur.



Figure: 31 TAC §155.15(b)(1)(C)(i)

**Residential Use, Category I**  
Coastal Easement Rent and Fees

**Notable Definitions**

Residential use, Category I—One single-family residential dwelling and accessory building(s) on one defined lot or parcel of land; both land and improvements are typically under the same ownership. (Definition from 31 TAC §155.1(d)(47))

Fill formula—Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

**Fees**

Application Fee: \$25.00 (per occurrence on new, amendment, and assignment applications)

**Rent**

Rental consideration is determined by taking the greater of:

- (i) Minimum Rent (\$25.00 annually per project component)
- (ii) Project Component Rent (listed below)

<b>Project Component</b>	<b>Annual Rent</b>
Piers, Docks and Watercraft Storage	\$0.03 per square foot
Multiple Boatlift, Boathouse, Covered Boat Slip, Oversized Personal and Watercraft Slip	\$250.00 for each additional
Covered Second Level (Partially or Fully)	\$75.00 per structure
Breakwater, Jetty, Groin	\$0.20 per square foot <sup>1</sup>
Dredge	
New Dredge	\$0.50 per cubic yard <sup>2</sup>
Existing Dredge	\$0.01 per square foot
Fill	
Proposed Fill	\$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable <sup>3</sup>
Concrete Stairs and Slabs	\$0.03 per square foot
Rip Rap, Vegetative Shoreline Stabilization, and Living Shorelines	No rent <sup>4</sup>

<sup>1</sup> Breakwaters constructed in association with a living shoreline will have no annual rent.

<sup>2</sup> New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

<sup>3</sup> (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$0.02 per square foot

    (-b-) existing fill permitted after August 15, 1995: ~~\$0.10~~ [\$0.32] per square foot -OR- fill formula

    (-c-) existing fill at renewal: 110% [120%] of the previous contract fill rate for each five-year period.

<sup>4</sup> Projects that consist only of rip rap or vegetative shoreline stabilization have no minimum rent.

Figure: 31 TAC §155.15(b)(1)(C)(ii)

**Residential Use, Category II  
Coastal Easement Rent and Fees**

**Notable Definitions**

Residential use, Category II--Multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and homeowners associations acting for and on behalf of owners of a multi-family residential development, but does not include time-share developments or any use that includes commercial activities. (Definition from 31 TAC §155.1(d)(48))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

**Fees**

Application Fee: \$50.00 (per occurrence on new, amendment, and assignment applications)

**Rent**

Rental consideration is determined by taking the greater of:

- (i) Minimum Rent (\$100.00 per year)
- (ii) Project Component Rent (listed below)

Project Component	Annual Rent
Piers, Docks and Watercraft Storage	\$0.15 per square foot
Breakwater, Jetty, Groin	\$0.20 per square foot <sup>1</sup>
Dredge	
New Dredge	\$0.50 per cubic yard <sup>2</sup>
Existing Dredge	\$0.01 per square foot
Open Encumbered Area	\$0.02 per square foot
Fill	
Proposed Fill	\$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable <sup>3</sup>
Concrete Stairs and Slabs	\$0.15 per square foot
Rip Rap, Vegetative Shoreline Stabilization, and Living Shorelines	No rent <sup>4</sup>

<sup>1</sup> Breakwaters constructed in association with a living shoreline will have no annual rent.

<sup>2</sup> New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

<sup>3</sup> (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$0.02 per square foot

(-b-) existing fill permitted after August 15, 1995: \$0.10 [\$0.32] per square foot -OR- fill formula

(-c-) existing fill at renewal: 110% [120%] of the previous contract fill rate for each five-year period.

<sup>4</sup> Projects that consist only of rip rap or vegetative shoreline stabilization have no minimum rent.

Figure: 31 TAC §155.15(b)(1)(C)(iii)

**Residential Use, Category III**  
Coastal Easement Rent and Fees

**Notable Definitions**

Residential use, Category III--One single family residential dwelling and accessory building(s) on one defined lot or parcel of land that is being used for (in part or whole) short-term residential rental--i.e. daily, weekly, monthly, seasonal; both land and improvements are typically under the same ownership. (Definition from 31 TAC §155.1(d)(49))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

**Fees**

Application Fee: \$50.00 (per occurrence on new, amendment, and assignment applications)

**Rent**

Rental consideration is determined by taking the greater of:

- (i) Minimum Rent (\$100.00 per year)
- (ii) Project Component Rent (listed below)

<b>Project Component</b>	<b>Annual Rent</b>
Piers, Docks and Watercraft Storage	\$0.15 per square foot
Multiple Boatlift, Boathouse, Covered Boat Slip, Oversized Personal and Watercraft Slip	\$250.00 for each additional
Covered Second Level (Partially or Fully)	\$75.00 per structure
Breakwater, Jetty, Groin	\$0.20 per square foot <sup>1</sup>
Dredge	
New Dredge	\$0.50 per cubic yard <sup>2</sup>
Existing Dredge	\$0.01 per square foot
Fill	
Proposed Fill	\$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable <sup>3</sup>
Concrete Stairs and Slabs	\$0.15 per square foot
Rip Rap, Vegetative Shoreline Stabilization, and Living Shorelines	No rent <sup>4</sup>

<sup>1</sup> Breakwaters constructed in association with a living shoreline will have no annual rent.

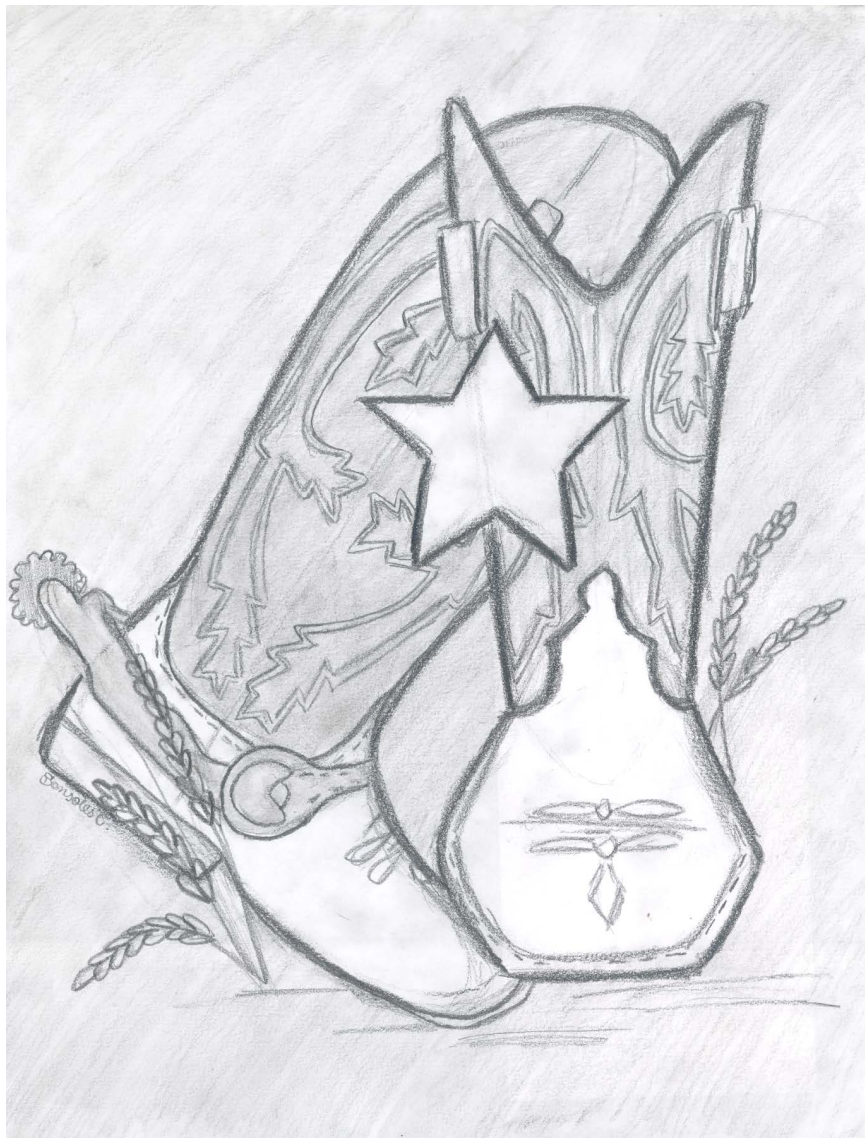
<sup>2</sup> New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

<sup>3</sup> (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$0.02 per square foot

    (-b-) existing fill permitted after August 15, 1995: \$0.10 [\$0.32] per square foot -OR- fill formula

    (-c-) existing fill at renewal: 110% [120%] of the previous contract fill rate for each five-year period.

<sup>4</sup> Projects that consist only of rip rap or vegetative shoreline stabilization have no minimum rent.



# 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 - March 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 March 2022 is \$56.56 per barrel for the three-month period beginning on December 1, 2021, and ending February 28, 2022. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of March 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 March 2022 is \$3.17 per mcf for the three-month period beginning on December 1, 2021, and ending February 28, 2022. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 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 March 2022 is \$108.26 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 March 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 March 2022 is \$4.98 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 March 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 April 20, 2022.

TRD-202201514

Jennifer Burleson  
Director, Tax Policy Division  
Comptroller of Public Accounts  
Filed: April 20, 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, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/25/22 - 05/01/22 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/25/22 - 05/01/22 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/22 - 05/31/22 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/22 - 05/31/22 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202201495

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: April 19, 2022

## Credit Union Department

### Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Gulf Credit Union, Groves, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work or attend school in Jasper County, Texas, to be eligible for membership in the credit union.

An application was received from Gulf Credit Union, Groves, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work or attend school in Liberty County, Texas, to be eligible for membership in the credit union.

An application was received from Gulf Credit Union, Groves, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work or attend school in Newton County, Texas, to be eligible for membership in the credit union.

An application was received from Gulf Credit Union, Groves, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work or attend school in Polk County, Texas, to be eligible for membership in the credit union.

An application was received from Gulf Credit Union, Groves, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work or attend school in Tyler County, Texas, to be eligible for membership in the credit union.

An application was received from Gulf Credit Union, Groves, Texas, to expand its field of membership. The proposal would permit persons

who live, worship, work or attend school in Bolivar Peninsula County, Texas, to be eligible for membership in the credit union.

An application was received from Gulf Credit Union, Groves, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work or attend school in Chambers County, Texas, to be eligible for membership in the credit union.

An application was received from Centex Citizens Credit Union, Mexia, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses and other legal entities in Falls, Leon, Robertson, Anderson, Henderson, Ellis and Freestone Counties, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202201500  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: April 20, 2022

### Applications to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application for a change to its principal place of business was received from West Texas Credit Union, Odessa, Texas. The credit union is proposing to change its domicile to 4301 Mission Blvd., Odessa, Texas 79765.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202201501  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: April 20, 2022

### Correction of Error

The Credit Union Department (department) published amendments to 7 TAC §91.720 in the March 25, 2022, issue of the *Texas Register* (45 TexReg 1555). Due to an error by the department, the cross-reference to statute information in the final paragraph of the preamble to the rule-

making contained incorrect information. The paragraph should read as follows:

The statutory provisions affected by the proposed amendments are Texas Finance Code, Section 124.002 and 124.101, regarding limitations on interest rates and borrower payment of loan expenses.

TRD-202201428  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: April 14, 2022

## State Board for Educator Certification

### Correction of Error

The Texas Education Agency (TEA), on behalf of the State Board for Educator Certification, filed the proposed amendments to 19 TAC Chapter 232, General Certification Provisions, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements, published in the December 31, 2021 issue of the *Texas Register* (46 TexReg 9172).

Due to error as submitted by the TEA, the phrase "; and" should be replaced with a period at the end of §232.11(e)(2)(G). The text should read as follows:

(G) preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under Texas Penal Code, §21.12, or for which reporting is required under TEC, §21.006.

Issued in Austin, Texas, on April 20, 2022.

TRD-202201519  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
State Board for Educator Certification  
Filed: April 20, 2022

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 31, 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 ap-

plicable 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 31, 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: 151 Jarrell, LLC; DOCKET NUMBER: 2021-0515-EAQ-E; IDENTIFIER: RN107282246; LOCATION: Jarrell, Williamson County; TYPE OF FACILITY: quarry; RULE VIOLATED: 30 TAC §213.4(j) and Edwards Aquifer Protection Plan ID Number 11-14051501, Standard Condition Number 6, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: AFFORDABLE ALCOVE SHOPS, INCORPORATED; DOCKET NUMBER: 2021-1094-PWS-E; IDENTIFIER: RN111293882; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$3,250; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: City of Strawn; DOCKET NUMBER: 2020-1498-MLM-E; IDENTIFIER: RN101424968; LOCATION: Strawn, Palo Pinto County; TYPE OF FACILITIES: public water supply and wastewater treatment facility; RULES VIOLATED: 30 TAC §290.42(f)(1)(E)(ii), by failing to provide containment facilities for all liquid chemical storage tanks; 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(s)(1), by failing to calibrate the one treated water flow meter and one backwash flow meter at least once every 12 months; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2018 - December 31, 2018, monitoring period; 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 of 0.060 milligrams per liter for haloacetic acids (HAA5) during the third quarter of 2018 through the first quarter of 2020; 30 TAC §290.122(c)(2)(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 conduct an operation evaluation and submit a written operation evaluation report to the ED within 90 days after being notified of analytical results that caused an exceedance of

the operational evaluation level for total trihalomethanes and HAA5 during the second and third quarters of 2018; and 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0010326002, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at intervals specified in the permit; PENALTY: \$32,408; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$32,408; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: CROWN Cork & Seal USA, Incorporated; DOCKET NUMBER: 2021-1340-AIR-E; IDENTIFIER: RN100218072; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: metal can manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O1034, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §101.201(b)(1)(H) and §122.143(4), FOP Number O1034, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; 30 TAC §101.201(c) and §122.143(4), FOP Number O1034, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; 30 TAC §101.201(f) and §122.143(4), FOP Number O1034, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to provide additional or more detailed information regarding the emissions event when requested by the Executive Director within the time established in the request; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 9331, Special Conditions Number 2, FOP Number O1034, GTC and STC Number 9, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$51,751; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: EPIC Y-Grade Logistics, LP; DOCKET NUMBER: 2021-1415-AIR-E; IDENTIFIER: RN110448834; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 152647, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,638; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: FATIMAH & LAIBA LLC dba Korner Food Mart; DOCKET NUMBER: 2021-1381-PST-E; IDENTIFIER: RN102821758; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Flint Hills Resources Houston Chemical, LLC; DOCKET NUMBER: 2021-1409-AIR-E; IDENTIFIER: RN102576063; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 18999, PSDTX755M1, and N216, Special Conditions

Number 1, Federal Operating Permit Number O1251, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$8,550; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Jane Borel dba Janes Shady Acres RV Park; DOCKET NUMBER: 2021-1416-PWS-E; IDENTIFIER: RN101206555; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(m), by failing to provide written notification to the Executive Director of the reactivation of an existing public water supply system; 30 TAC §290.42(b)(1) and (c)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; and 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: KIOLBASSA PROVISION COMPANY; DOCKET NUMBER: 2021-0073-WQ-E; IDENTIFIER: RN102315207; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: meat product manufacturing facility; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of industrial waste into or adjacent to any water in the state; PENALTY: \$6,627; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,313; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: KM Liquids Terminals LLC; DOCKET NUMBER: 2021-1393-AIR-E; IDENTIFIER: RN102753670; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: bulk liquid storage terminal; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 2480A, Special Conditions Number 1, Federal Operating Permit Number O1070, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,700; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,280; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Lake Amistad Rentals, L.L.C.; DOCKET NUMBER: 2021-1331-PWS-E; IDENTIFIER: RN101233294; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$2,875; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(12) COMPANY: Lennie Williams dba ASAP Tires; DOCKET NUMBER: 2021-1477-MSW-E; IDENTIFIER: RN111126355; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: used tire sales and repair shop; RULE VIOLATED: 30 TAC §328.56(c), by failing to use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated at the facility; PENALTY: \$2,625; ENFORCEMENT COORDINATOR:

Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(13) COMPANY: OCCIDENTAL PERMIAN LTD.; DOCKET NUMBER: 2021-1333-AIR-E; IDENTIFIER: RN102205119; LOCATION: Sundown, Hockley County; TYPE OF FACILITY: carbon dioxide recovery plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O3636, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 16842, Special Conditions Number 1, FOP Number O3636, GTC and STC Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,813; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(14) COMPANY: Occidental Permian Ltd.; DOCKET NUMBER: 2021-1410-AIR-E; IDENTIFIER: RN102167871; LOCATION: Anton, Hale County; TYPE OF FACILITY: oil and gas handling and production facility; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §106.6(b), Permit by Rule Registration Number 112442, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,938; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(15) COMPANY: Odfjell Terminals (Houston) Incorporated; DOCKET NUMBER: 2021-1396-AIR-E; IDENTIFIER: RN100218411; LOCATION: Seabrook, Harris County; TYPE OF FACILITY: organic liquid storage terminal; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 8865, Special Conditions Number 1, Federal Operating Permit Number O3027, General Terms and Conditions and Special Terms and Conditions Number 18, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,950; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Plainview Bioenergy, LLC dba White Energy; DOCKET NUMBER: 2021-1153-PWS-E; IDENTIFIER: RN101983278; LOCATION: Plainview, Hale County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; and 30 TAC §290.117(c)(2)(B), (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 Executive Director for the January 1, 2020 - December 31, 2020, monitoring period; PENALTY: \$3,982; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(17) COMPANY: RGI MATERIALS, INCORPORATED; DOCKET NUMBER: 2021-0960-WQ-E; IDENTIFIER: RN105195127; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: mineral mining and processing facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1) and Texas Pollutant Discharge Elimination System General Permit Number TXR05U571, Part V,



Section J, Number 5(b), by failing to prevent the unauthorized discharge of process water into or adjacent to any water in the state; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: United States Army Corps of Engineers; DOCKET NUMBER: 2021-1096-PWS-E; IDENTIFIER: RN102684198; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(c)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 1.0 gallons per minute per unit; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: \$855; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202201477

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 19, 2022



### Enforcement Orders

An agreed order was adopted regarding Air Products LLC, Docket No. 2021-0125-AIR-E on April 19, 2022, assessing \$6,563 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca 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 S.L.C. Water Supply Corporation, Docket No. 2021-0155-PWS-E on April 19, 2022, assessing \$4,547 in administrative penalties with \$909 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 City of Kennard, Docket No. 2021-0215-MWD-E on April 19, 2022, assessing \$5,750 in administrative penalties with \$1,150 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 BAIN TIRE CO. INC., Docket No. 2021-0407-PST-E on April 19, 2022, assessing \$7,150 in administrative penalties with \$1,430 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 HAJI, INC. dba RPS Discount Store, Docket No. 2021-0455-PST-E on April 19, 2022, assessing \$5,819 in administrative penalties with \$1,163 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 NDJASSI Group LLC dba Minny Mart, Docket No. 2021-0484-PST-E on April 19, 2022, assessing \$7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marilyn Norrod,

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 MURVAUL WATER SUPPLY CORPORATION, Docket No. 2021-0538-PWS-E on April 19, 2022, assessing \$2,147 in administrative penalties with \$429 deferred. Information concerning any aspect of this order may be obtained by contacting Ecco Beggs, 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 MR22 Investments Inc dba Top Mart, Docket No. 2021-0548-PST-E on April 19, 2022, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Avery, Docket No. 2021-0558-MWD-E on April 19, 2022, assessing \$4,687 in administrative penalties with \$937 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.

A field citation was adopted regarding McCown Veneer, Inc., Docket No. 2021-0592-WQ-E on April 19, 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.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2021-0719-PWS-E on April 19, 2022, assessing \$1,102 in administrative penalties with \$220 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2021-0720-PWS-E on April 19, 2022, assessing \$1,102 in administrative penalties with \$220 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding J.B. Homes, Inc, Docket No. 2021-1312-WQ-E on April 19, 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 Alma E. Tippins, Docket No. 2021-1548-OSI-E on April 19, 2022, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202201499

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 20, 2022



## Notice of District Petition

Notice issued April 13, 2022

TCEQ Internal Control No. D-03212022-036; GRBK Edgewood, LLC, a Texas limited liability company (Petitioner), filed a petition for the creation of Ellis Ranch Municipal Utility District No. 1 (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; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 571.147 acres located within Ellis County, Texas; and (3) the land within the proposed District is located partially within the extraterritorial jurisdiction of the City of Waxahachie (City), partially within the unincorporated area of Ellis County, and outside the corporate limits or extraterritorial jurisdiction of any other city or town. Additionally, information provided indicates that there are no lienholders on the property to be included in the proposed District. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$67,335,000 (\$48,160,000 for water, wastewater, and drainage plus \$19,175,000 for roads). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of their Property into the District.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://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](http://www.tceq.texas.gov).

TRD-202201404

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 13, 2022



## Notice of District Petition

Notice issued April 13, 2022

TCEQ Internal Control No. D-03112022-022; M/I Homes Houston, LLC, a Delaware limited liability company (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 211 (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; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 164.5 acres located within Montgomery County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Conroe, Texas.

By Ordinance No. 2604-22, passed and approved on February 10, 2022, the City of Conroe, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$24,400,000 (\$16,950,000 for water, wastewater, and drainage plus \$7,450,000 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](http://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](http://www.tceq.texas.gov).

TRD-202201405

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 13, 2022



Notice of Hearing on Studio Estates, L.L.C.: SOAH Docket No. 582-22-2095; TCEQ Docket No. 2021-1216-MWD; Permit No. WQ0015933001

### APPLICATION.

Studio Estates, L.L.C., 7212 Goforth Road, Suite 201, Kyle, Texas 78640, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015933001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. TCEQ received this application on October 1, 2020.

The facility will be located approximately 1.03 miles southeast of the intersection of Goforth Road and Niederwald Strasse Road, in Hays County, Texas 78640. The treated effluent will be discharged to Brushy Creek, thence to Soil Conservation Service (SCS) Site 14 Reservoir, thence to Brushy Creek, thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for Brushy Creek. The designated

uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use. Aquifer Protection applies to the contributing, recharge, and transition zones of the Edwards Aquifer. The discharge point and the discharge route are downstream of the contributing, recharge, and transition zones of the Edwards Aquifer and therefore aquifer protection does not apply. In accordance with 30 Texas Administrative Code (TAC) Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-97.76972%2C30.02111&level=12>. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at San Marcos Public Library, 625 East Hopkins Street, San Marcos, Texas.

### CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - May 31, 2022

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

**Meeting ID:** 161 457 8685

**Password:** h7szmq

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

**Meeting ID:** 161 457 8685

**Password:** 018652

**Visit the SOAH website for registration at:** <http://www.soah.texas.gov/>

**or call SOAH at (512) 475-4993.**

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing

will address the disputed issues of fact identified in the TCEQ order concerning this application issued on January 19, 2022. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

**In accordance with 1 Texas Admin. 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](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

#### **INFORMATION.**

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

Further information may also be obtained from Studio Estates, L.L.C. at the address stated above or by calling Mr. David Cuddy, President, at (512) 590-4513.

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: April 13, 2022

TRD-202201406

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 13, 2022



#### **Notice of Intent to Perform a Removal Action at the Marshall Wood Preserving Proposed State Superfund Site, in Marshall, Harrison County, Texas**

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, in accordance with Texas Health and Safety Code (THSC), §361.133(i), for the Marshall Wood Preserving proposed state Superfund site (the site).

The site, including all land, structures, appurtenances, and other improvements, is approximately 14.5 acres, located at the historical address of 2700 West Houston Street, Marshall, Harrison County, Texas. The site also includes any areas where hazardous substances have come to be located as either a direct or indirect result of releases of hazardous substances from the site.

The site was proposed for listing to the state Superfund registry in the September 25, 1990, issue of the *Texas Register* (15 TexReg 5623).

The site is a former pentachlorophenol and creosote wood treating facility that operated from approximately 1949 to 1980. The northern portion of the site contains two former process wastewater surface im-

poundments. The impoundments contain wood chips, other fill material, and non-aqueous phase liquid containing pentachlorophenol, creosote, and other organic chemicals of concern (COCs). The non-aqueous phase liquid present in the impoundments constitutes a continuing source of releases of organic COCs to groundwater. Pentachlorophenol and creosote are hazardous substances listed in 40 Code of Federal Regulations §302.4(a) and, therefore, are hazardous substances under the Texas Solid Waste Disposal Act (THSC, §361).

The removal action will consist of measures to mitigate the impoundments as a continuing source of releases of COCs, such as the excavation and proper disposal of the contents of the impoundments and other actions as deemed appropriate. The excavated areas will then be backfilled with clean material and the area restored. This removal action is necessary to mitigate a continuing source of releases at the site and eliminate the physical and chemical hazards associated with the impoundments. The removal action is appropriate to protect human health and the environment, can be completed without extensive investigation and planning, and will achieve a significant cost reduction for the site.

The agency has established a site record repository at the Marshall Public Library, located at 300 S. Alamo Blvd., Marshall, Texas 75670, (903) 935-4465. Complete copies of the TCEQ's public records concerning the site may be obtained during regular business hours at the TCEQ's Central File Room (CFR), located at 12100 Park 35 Circle, Building E, First Floor, in Austin, Texas, (512) 239-2900. Currently the CFR customer viewing area is open 9:00 a.m. to 3:00 p.m., on weekdays. Appointment and information requests can be submitted through email, at [cfrreq@tceq.texas.gov](mailto:cfrreq@tceq.texas.gov). Accessible parking is available on the east side of Building D, convenient to access ramps located between Buildings D and E. Photocopying of file information is subject to payment of a fee. Central File Room Records are also accessible online, at <https://www.tceq.texas.gov/agency/data/records-services>. Additional files may be obtained by contacting the TCEQ project manager for the site, Scott Settemeyer, P.G, at (512) 239-3429. Also, for additional assistance obtaining site documents, you may contact Crystal Taylor, community relations liaison, at (800) 633-9363 or email your request to [superfnd@tceq.texas.gov](mailto:superfnd@tceq.texas.gov). Information is also available on the site's webpage, at <https://www.tceq.texas.gov/remediation/superfund/state/marshall.html>.

TRD-202201478

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 19, 2022



#### **Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 31, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and

rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 31, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Eric Fregia; DOCKET NUMBER: 2019-1194-MLM-E; TCEQ ID NUMBER: RN110664521; LOCATION: 133 County Road 3431, Cleveland, Liberty County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; and Texas Health and Safety Code, §382.085(b), and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; PENALTY: \$2,201; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: FPG CT Owner, LP; DOCKET NUMBER: 2021-0359-IWD-E; TCEQ ID NUMBER: RN101052751; LOCATION: 2200 Ross Avenue, in the Dallas Central Business District, bound by Ross Avenue to the north, Pearl Street to the west, San Jacinto Street to the south, and Leonard Street to the east, Dallas, Dallas County; TYPE OF FACILITY: industrial wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004161000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$43,875; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Howard C. Bigham, Jr.; DOCKET NUMBER: 2019-1669-PWS-E; TCEQ ID NUMBERS: RN101246262; RN108305152; LOCATION: 2116 Tuscola Avenue near Snyder, Scurry County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), (B)(iii) and (iv), and (D)(ii), and TCEQ Agreed Order Docket Number 2017-0571-PWS-E, Ordering Provision Number 2.a.viii, by failing to maintain water works operation and maintenance records and make them readily available to commission personnel upon request; 30 TAC §290.46(i) and TCEQ Agreed Order Docket Number 2017-0571-PWS-E, Ordering Provision Number 2.a.ix, by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(z) and TCEQ Agreed Order Docket Number 2017-0571-PWS-E, Ordering Provision Number 2.a.x, by failing to create a nitrification action plan for a system distributing chloraminated water; 30 TAC §290.42(e)(3)(G) and TCEQ Agreed Order Docket

Number 2017-0571-PWS-E, Ordering Provision Number 2.d.ii, by failing to obtain an exception, in accordance with 30 TAC §290.39(1), prior to blending water containing chloramines and water containing free chlorine; 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to maintain water works operation and maintenance records and make them readily available to commission personnel upon request; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements for all land within 150 feet of the facility's two wells; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; 30 TAC §290.42(e)(5), by failing to completely cover the hypochlorination solution container top to prevent the entrance of dust, insects, and other contaminants; 30 TAC §290.43(c)(3), by failing to ensure that the discharge opening of the overflow is covered with a gravity-hinged and weighted cover which fits tightly with no gap over 1/16 inch; 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; Texas Health and Safety Code (THSC), §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to use a water works operator who holds a Class D or higher license; THSC, §341.0315(c) and 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; 30 TAC §290.44(i) and TCEQ Agreed Order Docket Number 2017-0571-PWS-E, Ordering Provisions Numbers 2.f. and 2.h, by failing to obtain approval from the executive director (ED) prior to supplying drinking water distributed by a tanker truck or trailer to persons served by the facility; 30 TAC §290.110(e)(4)(A) and (f)(3), and TCEQ Agreed Order Docket Number 2017-0571-PWS-E, Ordering Provision Number 2.d.i, by failing to submit a Disinfection Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), and TCEQ Agreed Order Docket Number 2017-0571-PWS-E, Ordering Provision Number 2.a.i, 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; 30 TAC §290.271(b) and §290.274(a) and (c), and TCEQ Agreed Order Docket Number 2017-0571-PWS-E, Ordering Provisions Numbers 2.a.vii. and 2.b.ii, by failing to mail or directly deliver on copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ; and TCEQ Agreed Order Docket Number 2017-0571-PWS-E, Ordering Provision Number 2.a.vi, by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements; PENALTY: \$7,498; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202201483



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 31, 2022**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 31, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: HMI Builders, LLC; DOCKET NUMBER: 2019-1633-WQ-E; TCEQ ID NUMBER: RN110314887; LOCATION: approximately 1.5 miles west of the intersection of United States Highway 83 and United States Highway 84 on the south side of United States Highway 83, Tuscola, Taylor County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15706O, Part III, Section D.2, by failing to post the TCEQ site notice near the main entrance of the construction site; TWC, §26.121(a)(2), 30 TAC §305.125(1) and TPDES General Permit Number TXR15706O, Part III, Section F.6(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; and TWC, §26.121(a)(2), 30 TAC §305.125(1) and TPDES General Permit Number TXR15706O, Part III, Section G.4(b), by failing to design, install, implement, and maintain effective pollution prevention measures to minimize the exposure of building materials, building products, construction wastes, trash, landscape materials,

fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present at the site to precipitation and to stormwater; PENALTY: \$6,255; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Skywater Water Supply Corporation; DOCKET NUMBER: 2020-0212-PWS-E; TCEQ ID NUMBER: RN106855067; LOCATION: 140 Busby Road near Hereford, Castro County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2018 - December 31, 2018 monitoring period; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2019 - June 30, 2019 monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2018 - June 30, 2018 and July 1, 2018 - December 31, 2018 monitoring periods; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the calendar year 2018; and 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on October 31, 2019, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; PENALTY: \$1,787; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Skywater Water Supply Corporation; DOCKET NUMBER: 2021-0467-PWS-E; TCEQ ID NUMBER: RN106855067; LOCATION: 140 Busby Road near Hereford, Castro County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and TCEQ Agreed Order Docket Number 2018-0425-PWS-E, Ordering Provision Number 2.c, by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director (ED) for each month by the tenth day of the month following the end of the quarter; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit to the ED a copy of the public notification accompanied with a signed Certificate of Delivery; and TWC, §5.702 and 30 TAC §291.76, by failing to submit Regulatory Assessment Reporting information for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 13206 for calendar years 2017 - 2019; PENALTY: \$6,280; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-202201484

Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: April 19, 2022



### Notice of Opportunity to Comment on Shutdown/Default Orders of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 31, 2022**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 31, 2022**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone number; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: CLEVELAND VENTURES, L.C.C. dba Valero Corner Store 1410; DOCKET NUMBER: 2020-0685-PST-E; TCEQ ID NUMBER: RN102365772; LOCATION: 1109 East Houston Street, Cleveland, Liberty County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected

releases of regulated substances requiring reporting under 30 TAC §334.72 (relating to Reporting of Suspected Releases) within 30 days; PENALTY: \$41,302; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Sunnys Rufe Snow Inc dba Sunny Shell; DOCKET NUMBER: 2020-0240-PST-E; TCEQ ID NUMBER: RN100746882; LOCATION: 4037 Rufe Snow Drive, North Richland Hills, Tarrant County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.225, by failing to comply with annual Stage I vapor recovery testing requirements; TWC, §26.3475(c)(2) and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overflow containers, or catchment basins associated with a UST system at least once every 60 days to ensure that their sides, bottoms, and any penetration points are maintained liquid tight; TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ Agreed Order Docket Number 2016-1394-PST-E, Ordering Provision Number 2.a, by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the USTs at the station; TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(C), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tanks when the liquid level in the tank reaches a preset level which shall be no higher than 95% capacity; and 30 TAC §334.603(b)(2), by failing to maintain a list of all Class C Operators who have been trained for the station; PENALTY: \$63,319; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202201482  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: April 19, 2022



### Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Darrell Kennemer: SOAH Docket No. 582-22-2372; TCEQ Docket No. 2019-1648-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

**10:00 a.m. - May 12, 2022**

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

**Meeting ID:** 160 346 8445

**Password:** TCEQMAY12

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

**Meeting ID:** 160 346 8445

**Password:** 646972777

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 18, 2021 concerning assessing administrative penalties against and requiring certain actions of Darrell Kennemer, for violations in Wise County, Texas, of: Texas Health & Safety Code §361.112(a) and 30 Texas Administrative Code §328.60(a).

The hearing will allow Darrell Kennemer, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Darrell Kennemer, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Darrell Kennemer to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Darrell Kennemer, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code ch. 7, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 328; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Taylor Pearson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: April 13, 2022

TRD-202201415

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 14, 2022



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Pete Kelly and Martin Rechnitzer, Guardian of the Person and Estate of Emmette Kelly: SOAH Docket No. 582-22-2348; TCEQ Docket No. 2019-1685-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - May 12, 2022**

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

**Meeting ID:** 160 346 8445

**Password:** TCEQMAY12

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

**Meeting ID:** 160 346 8445

**Password:** 646972777

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 17, 2020 concerning assessing administrative penalties against and requiring certain actions of Pete Kelly and Martin Rechnitzer, Guardian of the Person and Estate of Emmette Kelly, for violations in Johnson County, Texas, of: 30 Texas Administrative Code §330.15(a) and (c).

The hearing will allow Pete Kelly and Martin Rechnitzer, Guardian of the Person and Estate of Emmette Kelly, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Pete Kelly and Martin Rechnitzer, Guardian of the Person and Estate of Emmette Kelly, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Pete Kelly and Martin Rechnitzer, Guardian of the Person and Estate of Emmette Kelly to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Pete Kelly and Martin Rechnitzer, Guardian of the Person and Estate of Emmette Kelly, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.



Legal Authority: Texas Water Code §7.054, Texas Water Code ch. 7, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Barrett Hollingsworth, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: April 13, 2022

TRD-202201416

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 14, 2022



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Sure Shot Logistics, LLC: SOAH Docket No. 582-22-2347; TCEQ Docket No. 2020-0864-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - May 12, 2022**

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

**Meeting ID:** 160 346 8445

**Password:** TCEQMAY12

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

**Meeting ID:** 160 346 8445

**Password:** 646972777

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed September 9, 2021 concerning assessing administrative penalties against and requiring certain actions of Sure Shot Logistics, LLC, for violations in McCulloch County, Texas, of: Texas Water Code §26.039(c) and 30 Texas Administrative Code §327.5(a).

The hearing will allow Sure Shot Logistics, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Sure Shot Logistics, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Sure Shot Logistics, LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes.** Sure Shot Logistics, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 327; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Taylor Pearson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: April 13, 2022

TRD-202201417

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 14, 2022



## Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 112 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 112, Control of Air Pollution from Sulfur Compounds, and three corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed 30 TAC Chapter 112 rules (**Project Number 2021-035-112-AI**) would set requirements for controlling SO<sub>2</sub> emissions, including monitoring, testing, recordkeeping, and reporting for emissions sources identified in the 2010 Sulfur Dioxide (SO<sub>2</sub>) nonattainment areas located in Howard, Hutchinson, and Navarro Counties. Each of the three proposed SIP revisions provides an attainment demonstration and other required SIP elements for the applicable SO<sub>2</sub> nonattainment area: Howard County (**Project Number 2021-010-SIP-NR**); Hutchinson County (**Project Number 2021-011-SIP-NR**); and Navarro County (**Project Number 2021-012-SIP-NR**).

The commission will offer three public hearings on these proposals. The first hearing will be offered in Big Spring on May 18, 2022, at 6:00 p.m. CDT in the Ballroom at Dora Roberts Community Center located at 100 Whipkey Drive. The second hearing will be offered in Borger on May 19, 2022, at 6:00 p.m. CDT in the City Council Room at Borger City Hall located at 600 N. Main St. The third hearing will be offered in Corsicana on May 23, 2022, at 6:00 p.m. CDT in the Cook Education Center at Navarro College located at 3100 West Collin Street. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

The hearing will be conducted in English. Language interpretation services may be requested. Persons who have communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

The comment period for these proposals closes June 2, 2022. Written comments will be accepted through the *eComments* system at <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments submitted via the *eComments* system. For additional submission methods for the rules, please contact Joseph Thomas at (512) 239-3934 or [joseph.thomas@tceq.texas.gov](mailto:joseph.thomas@tceq.texas.gov). For

additional submission methods for the SIP revisions, please contact Mary Ann Cook at (512) 239-6739 or [maryann.cook@tceq.texas.gov](mailto:maryann.cook@tceq.texas.gov).

Rulemaking comments should reference **Rule Project Number 2021-035-112-AI**. Comments for the Attainment Demonstration SIP Revisions for the 2010 Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) should reference **Project Number 2021-010-SIP-NR** regarding Howard County, **Project Number 2021-011-SIP-NR** regarding Hutchinson County, and/or **Project Number 2021-012-SIP-NR** regarding Navarro County.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Copies of the Howard, Hutchinson and Navarro County Attainment Demonstration SIP revisions for the 2010 SO<sub>2</sub> NAAQS can be obtained from the commission's website at <https://www.tceq.texas.gov/airquality/sip/siplans.html#prosips>.

TRD-202201438

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 14, 2022



## Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 2384A

Application. Wastewater Residuals Management, LLC, 826 Linger Lane, Austin, Texas 78721, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize an increase in the daily maximum capacity; simplification of permit requirements pertaining to processing capacity consistent with other, similar permits; an expanded list of wastes authorized for processing; and addition of a new handling area for receiving and dewatering of grit trap wastes of the Type V Austin Wastewater Processing Facility. The facility is located at 826 Linger Lane, Austin, in Travis County, Texas 78721. The TCEQ received this application on March 14, 2022. The permit application is available for viewing and copying at the Austin Public Library - Willie Mae Kirk Branch, 3101 Oak Springs Drive, Austin, in Travis County, Texas 78702, and may be viewed online at <http://www.wrmdisposal.com/2384>. 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/LKKGn>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all

timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit

application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Wastewater Residuals Management, LLC at the address stated above or by calling Ms. Kathy McGee, P.E., Principal Engineer, at (512) 425-2000.

TRD-202201498

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 19, 2022



### Notice of Water Quality Application

The following notices were issued on April 14, 2022, thru April 18, 2022.

The following notices do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

### INFORMATION SECTION

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002605000 issued to Southwest Shipyard LP, which operates Southwest Shipyard, a marine vessel cleaning and repair facility, to authorize the removal of the self-expiring daily maximum monitoring requirement for per- and polyfluoroalkyl (PFAS). The existing permit authorizes treated wastewaters, which include centralized waste treatment wastewaters, barge wash water, third party biotreatable wastewater, domestic wastewater, utility wastewaters (vacuum tower cooling water and boiler blowdown), steam condensate, barge ballast water, water treatment wastes, fresh water filter backwash, and contaminated stormwater runoff at a daily average flow not to exceed 200,000 gallons per day via Outfall 001; dry dock runoff and stormwater runoff on an intermittent and flow-variable basis via Outfalls 003, 004, and 005; and barge ballast water on an intermittent and flow-variable basis via Outfall 006. The facility is located 18310 Market Street, in the City of Channelview, in Harris County, Texas 77530.

OSVE Dairy, LLC has applied for a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003682000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to reconfigure the Land Management Units (LMUs) #2, #2SW, #3 and #3SW by moving the center pivot in LMU #2 to avoid the cut-off area, so that LMU #2 is now 40 acres and LMU #3 is 43 acres. Another change is the renaming of LMU #2SW and LMU #3SW are now LMU #5 only, but there is no change to LMUs #1, #4A and #4B. The total land application area remains 150 acres. The drainage area of the retention control structure (RCS) was reconfigured by removing pen areas and the RCS design calculations were revised, which changed the required capacity of RCS #2 from 20.47 to 19.92 acre-feet. Another change is the addition of new Well #9 to the permit. Other changes to the production area include the addition of a roofed area next to the parlor and a covered feed mixing area. The facility maps have been revised to reflect these changes. The authorized maximum capacity of 1,500 head, of which 1,300 head are milking cows, will not change. The facility is located

on the east side of U.S. Highway 281, approximately 10 miles south of the city limits of Stephenville 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](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-202201497

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 19, 2022

## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 11, 2022, to April 15, 2022. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, April 22, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, May 22, 2022.

#### FEDERAL AGENCY ACTIONS:

**Applicant:** West Gulf Marine, Inc.

**Location:** The project site is located in Galveston Bay, at 6000 Harborside Drive, in Galveston, Galveston County, Texas.

**Latitude & Longitude (NAD 83):** 29.298344, -94.843472

**Project Description:** The applicant is requesting that their expired permit be modified to extend the time for construction to complete previously authorized work. The applicant proposes to construct approximately 560 linear feet of new bulkhead, 175 linear feet will be located below the mean high tide line, requiring 171 cubic yards of clean fill material into 0.094 acre of waters of the United States; relocate 2 existing mooring structures and existing rip-rap; to install a 12-inch concrete slab; and to hydraulically dredge approximately 100,000 cubic yards of sandy non-vegetated material within 6 acres located adjacent to West Gulf Marine's existing shipyard facilities to a depth of -18 mean low tide. The applicant is also requesting authorization to perform future maintenance dredging within both the modified and previously authorized dredge footprint.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-1994-02067. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 22-1261-F1

**Applicant:** Howard Energy Partners

**Location:** The project site is located in the Port Arthur Canal, at 2350 South Gulfway, in Port Arthur, Jefferson County, Texas.

**Latitude & Longitude (NAD 83):** 29.832072, -93.964733

**Project Description:** The applicant proposes to extend the authorized dredge limits of a previously authorized area in front of an existing dock to the limit of the adjacent federal channel. The applicant also requests authorization to deepen this area to a depth of 48 feet below mean lower low water with allowances for 1 foot of over dredge and 1 foot of advanced maintenance. The previously authorized depth was 42 feet below mean low tide.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2011-01232. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 22-1262-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202201494

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: April 19, 2022

## Texas Health and Human Services Commission

### Public Notice - Texas State Plan for Medical Assistance Amendment Effective June 1, 2022

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective June 1, 2022.

The purpose of the amendment is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Physicians; and

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).

The proposed amendment is estimated to result in an annual aggregate expenditure of \$57,815 for federal fiscal year (FFY) 2022, consisting of \$38,736 in federal funds and \$19,079 in state general revenue. For FFY 2023, the estimated annual aggregate expenditure is \$219,363 consisting of \$131,333 in federal funds and \$88,030 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is \$216,698, consisting of \$129,737 in federal funds and \$86,961 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Provider Finance website under the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>.

## Rate Hearings.

A rate hearing was conducted online on November 19, 2021, at 1:00 p.m. Information about the proposed rate changes and the hearing was published in the October 29, 2021, and November 5, 2021, issues of the *Texas Register* (46 TexReg 7451, 46 TexReg 7662). Additional information and the notice of hearings can be found at <http://www.sos.state.tx.us/texreg/index.shtml>.

A rate hearing will be held both online and in person on May 16, 2022, at 9:00 a.m. to address additional rate updates proposed to be effective June 1, 2022. Information about the proposed rate changes and the hearing was published in the April 22, 2022, issue of the *Texas Register* (47 TexReg 2359) at <http://www.sos.state.tx.us/texreg/index.shtml> and can be found at <https://www.hhs.texas.gov/about/communications-events/meetings-events/2022/05/16/public-hearing-notice-proposed-medicaid-payment-rates-medicaid-biennial-calendar-fee-reviews-medical>.

## Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shaneqwea James, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhs.state.tx.us](mailto:Medicaid_Chip_SPA_Inquiries@hhs.state.tx.us). Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

## Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

### U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W Guadalupe St

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

[PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov)

Preferred Communication.

During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal

business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this state plan amendment.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202201476

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 18, 2022

## Texas Higher Education Coordinating Board

### Correction of Error

The Texas Higher Education Coordinating Board (THECB) published a Notice of Intent to Engage in Negotiated Rulemaking in the April 15, 2022, issue of the *Texas Register* (47 TexReg 2050). Due to an error by the Texas Register, the section of the notice regarding application for membership on the negotiated rulemaking committee was incomplete. The section should have read as follows:

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

--Name and contact information of the person submitting the application;

--Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

--Name and contact information of the person being nominated for membership; and

--Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for Open Educational Resources (OER) Grant Program. Comments and applications for membership on the committee must be submitted by April 24, 2022, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at [Laurie.Frederick@highered.texas.gov](mailto:Laurie.Frederick@highered.texas.gov).

TRD-202201479

### Meeting of Negotiated Rulemaking Committee on Open Educational Resources Grant Program

Date of Meeting: May 12, 2022

Start Time of Meeting: 09:30 a.m.

Location: Meeting will be held via video conference. A link to the video conference will be available at <https://www.highered.texas.gov/>

Additional Information Obtained From: Laurie Frederick, Convener, (512) 427-6446, [Laurie.Frederick@highered.texas.gov](mailto:Laurie.Frederick@highered.texas.gov)

### Agenda:

1. Introductions
2. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
3. Brief Overview of Roles and Responsibilities
  - a) Role of Facilitator
  - b) Role of Sponsor Agency
  - c) Role of Committee Members
4. Consideration and Possible Action to Approve Facilitator
5. Procedural Issues
  - a) Consideration and Possible Action to Approve Ground Rules
  - b) Consideration and Possible Action to Approve Definition of Consensus
6. Discussion of Draft Rule Language on Open Educational Resources Grant Program
7. Consideration and Possible Action to Approve Proposed Rule Language on Open Educational Resources Grant Program

Individuals who may require auxiliary aids or services for this meeting should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

All persons requesting to address the Committee regarding an item on this agenda should do so in writing at least 24 hours before the start of the meeting at [Laurie.Frederick@highered.texas.gov](mailto:Laurie.Frederick@highered.texas.gov). A toll-free telephone number, free-of-charge video conference link, or other means will be provided by which to do so.

TRD-202201485  
 Nichole Bunker-Henderson  
 General Counsel  
 Texas Higher Education Coordinating Board  
 Filed: April 19, 2022



### Meeting of Negotiated Rulemaking Committee on Texas College Work Study

Date of Meeting: May 10, 2022

Start Time of Meeting: 9:30 a.m.

Location: Meeting will be held via video conference. A link to the video conference will be available at <https://www.highered.texas.gov/>

Additional Information Obtained From: Laurie Frederick, Convener, (512) 427-6446, [Laurie.Frederick@highered.texas.gov](mailto:Laurie.Frederick@highered.texas.gov)

**Agenda:**

1. Introductions
2. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
3. Brief Overview of Roles and Responsibilities
  - a) Role of Facilitator
  - b) Role of Sponsor Agency
  - c) Role of Committee Members
4. Consideration and Possible Action to Approve Facilitator
5. Procedural Issues

- a) Consideration and Possible Action to Approve Ground Rules
- b) Consideration and Possible Action to Approve Definition of Consensus
6. Discussion of Draft Rule Language on Texas College Work Study
7. Consideration and Possible Action to Approve Proposed Rule Language on Texas College Work Study

Individuals who may require auxiliary aids or services for this meeting should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

All persons requesting to address the Committee regarding an item on this agenda should do so in writing at least 24 hours before the start of the meeting at [Laurie.Frederick@highered.texas.gov](mailto:Laurie.Frederick@highered.texas.gov). A toll-free telephone number, free-of-charge video conference link, or other means will be provided by which to do so.

TRD-202201486  
 Nichole Bunker-Henderson  
 General Counsel  
 Texas Higher Education Coordinating Board  
 Filed: April 19, 2022



### Texas Department of Housing and Community Affairs

#### Notice of Public Comment Period and Public Hearings on the Draft 2023 Low Income Home Energy Assistance Program (LIHEAP) State Plan

In accordance with the U.S. Department of Health and Human Services' requirement for the Low Income Home Energy Assistance Program (LIHEAP) and Texas Government Code, Chapter 2105, Subchapter B, the Texas Department of Housing and Community Affairs (TDHCA) is opening a public comment period and conducting four public hearings to solicit comments on the Draft 2023 LIHEAP State Plan.

The LIHEAP Draft Plan describes the proposed use and distribution of LIHEAP funds for Program Year (January through December) 2023. LIHEAP provides funding for the Comprehensive Energy Assistance Program (CEAP) and the Weatherization Assistance Program (WAP).

The LIHEAP Draft Plan was presented and approved by the TDHCA Board of Directors on April 14, 2022. As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of TDHCA has posted the proposed Plan on the TDHCA website.

Please visit the TDHCA Public Comment Center at <http://www.tdhca.state.tx.us/public-comment.htm> to access the Plan.

The documents also may be obtained by contacting Rita Gonzales-Garza at [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us) or by phone at (512) 475-3905.

Public hearings for the LIHEAP Draft Plan will be held as follows:

--Monday, May 9, 2022, from 2:30 p.m. - 3:00 p.m. at the Como Community Center, 4660 Horne St., Fort Worth, Texas 76107

--Tuesday, May 10, 2022, from 5:30 p.m. - 6:00 p.m. at 1415 East 2nd, Odessa, Texas 79761

--Wednesday, May 11, 2022, from 1:30 p.m. - 2:00 p.m. at BakerRipley, 3838 Aberdeen Way, 1st Floor Education Center Room, Houston, Texas 77025

--Thursday, May 12, 2022, from 5:30 p.m. - 6:00 p.m. in the Thomas Jefferson Rusk Building, Room 320, located at 208 East 10th Street, Austin, Texas 78701

At each of the hearings, the LIHEAP Draft Plan will be presented for public comment. Persons may provide comment on the Plan either through oral testimony or written testimony. A representative from TDHCA will be present at the hearing to explain the planning process and receive comments from interested citizens and affected groups regarding the Plan.

The public comment period to accept comments regarding the LIHEAP Draft Plan will be open from Friday, April 29, 2022, through Wednesday, May 25, 2022, at 5:00 p.m. Austin local time. Written comments concerning the Plan may also be submitted to the Texas Department of Housing and Community Affairs, Attn: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us). Comments are due no later than 5:00 p.m. Austin local time, Wednesday, May 25, 2022. Any questions regarding the public comment process may be directed to Rita Gonzales-Garza, Program Specialist, in the Community Affairs Division at (512) 475-3905 or [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us).

Individuals who require auxiliary aids, services or sign language interpreters for this hearing should contact Rita Gonzales-Garza, at (512) 475-3905 at least three days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearing should contact Rita Gonzales-Garza at (512) 475-3905 or by email at [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us) at least three days before the hearing so that appropriate arrangements can be made.

Personas que hablan español y requieren un interprete, favor de llamar a Rita Gonzales-Garza al siguiente numero (512) 475-3905 o enviarle un correo electronico a [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us) por lo menos tres dias antes de la junta para hacer los preparativos apropiados.

Aviso de Audiencia Pública sobre el Anteproyecto de la Solicitud y los Planes Estatales para el Año Fiscal Federal 2023 del Low Income Home Energy Assistance Program (LIHEAP)

Conforme con los requisitos del Departamento de Salud y Servicios Humanos de los Estados Unidos para la programa federal del Low Income Home Energy Assistance Program (LIHEAP, por sus siglas en ingles) y el Capítulo 2105, Subcapítulo B del Código del Gobierno de Texas, el Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA, por sus siglas en ingles) conducirá varias audiencias públicas. El propósito principal de estas audiencias es para solicitar comentario público sobre los anteproyectos de la Solicitud y el Plan Estatal para los Años Fiscal Federal (FFY, por sus siglas en ingles) del anteproyecto del al Solicitud y el Plan Estatal LIHEAP para el FFY 2023 (Anteproyecto del Plan Estatal LIHEAP).

El Anteproyecto del Plan Estatal LIHEAP detalla el propuesto uso y distribución de los fondos federales LIHEAP para el FFY 2023. El programa de LIHEAP provee fondos para los programas de Comprehensive Energy Assistance Program (CEAP, por sus siglas en ingles) y el Weatherization Assistance Program (WAP, por sus siglas en ingles).

Los Anteproyectos del Plan Estatal de LIHEAP fue presentada y aprobada por la junta directiva del TDHCA el 14 de abril del 2022. Como seguimiento a la provision de información pública, asesoramiento y los requisitos de las audiencias públicas para la programa LIHEAP, la División de Asuntos Comunitarios del TDHCA publicará los anteproyectos de el plan estatal federal en el sitio web del TDHCA Public Comment Center en <http://www.tdhca.state.tx.us/public-comment.htm>.

El documento se puede obtener comunicandose al TDHCA, P.O. Box 13941, Austin, Texas 78711-3941 o por teléfono al (512) 475-3905.

Las audiencias pública para el Anteproyecto de los Planes Estatales LIHEAP serán:

--lunes, 9 de mayo 2022, 2:30 p.m. - 3:00 p.m., el Como Community Center, 4660 Horne St., Fort Worth, Texas 76107

--martes, 10 de mayo 2022, 5:30 p.m. - 6:00 p.m., 1415 East 2nd, Odessa, Texas 79761

--miércoles, 11 de mayo 2022, 1:30 p.m. - 2:00 p.m., BakerRipley, 3838 Aberdeen Way, 1st Floor Education Center Room, Houston, Texas 77025

--jueves, 12 de mayo 2022, 5:30 p.m. - 6:00 p.m., edificio Thomas Jefferson Rusk, cuarto # 320, 208 East 10th Street, Austin, Texas 78701

Durante las audiencias los Anteproyecto de LIHEAP seran presentados para solicitar comentario público. Personas interesadas pueden proveer comentario public sobre el Anteproyecto del Plan de LIHEAP en forma escrita o testimonio oral. Un representante del TDHCA explicará el proceso de planificación y recibir comentario público de personas y grupos interesadas respecto a los anteproyectos de los planes estatales.

El período de comentario público para aceptar comentarios sobre el anteproyecto del plan estatal comienza el viernes, 29 de abril del 2022, hasta el miércoles, 25 de mayo del 2022, a las 5:00 de la tarde hora local. Comentarios escritos sobre los anteproyectos de los planes estatales tambien pueden ser presentados por correo al Texas Department of Housing and Community Affairs, Atención: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941 o pueden enviarse a través de correo electrónico a [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us) o por fax al (512) 475-3935. Comentario público no será aceptado luego de las 5 de la tarde hora local el 25 de mayo del 2022. Si tiene preguntas sobre este proceso, comuníquese con Gavin Reid, al (512) 936-7828 o envíe un correo electrónico a: [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us).

Personas que necesitan equipos o servicios auxiliares para esta junta deben comunicarse con Gina Esteves, empleada responsable de la ley sobre la Ley de Estado Unidos con Discapacidades (ADA, por sus siglas en ingles), al (512) 475-3905 o al Relay Texas al 1 (800) 662-4954 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Personas que hablan español y requieren un intérprete, favor de llamar a Rita Gonzales-Garza al siguiente número (512) 475-3905 o enviarle un correo electrónico a [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us) por lo menos tres días antes

TRD-202201496

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: April 19, 2022

## Texas Parks and Wildlife Department

### Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

The City of San Marcos has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb up to 316 cubic yards of sedimentary material within the San Marcos River in Hays County. The purpose of the disturbance is to construct a new stormwater outfall to the San Marcos River as part of the Blanco Gardens Flood Improvements Project. The location is approximately 0.24 miles downstream

of the Cape Road crossing and 2.35 miles upstream of the confluence with the Blanco River. Notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on May 20, 2022. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, the public comment hearing will be conducted through remote participation. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202201473

James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
Filed: April 18, 2022

## Plateau Water Planning Group

Vacancy Notice - Municipalities Interest (Val Verde County)

Please be advised that the Plateau Water Planning Group (PWPG), Region "J" is currently seeking nominations to fill one vacancy on the Regional Planning Group. This vacancy represents the "Municipalities" interests. The PWPG and Texas Water Development Board (TWDB) believe it is important to maintain balanced geographic representation on the PWPG. Therefore, please note that the referenced vacancy represents Val Verde County.

The Plateau Water Planning Group is a voluntary organization and no funds are available for reimbursement of expenses associated with service to or participation in the planning group. Successful nominees must represent the vacant interest ("Municipalities") for which the member is sought, be willing to actively participate in the regional water planning process and abide by the PWPG By-Laws. Written nominations must be filed with the Plateau Water Planning Group at the address listed below no later than May 20, 2022.

Submit written nominations to:

**Plateau Water Planning Group (PWPG)**

**Attention: Mr. Gene Williams**

**c/o: Jody Grinstead**

**700 Main Street, Ste. 101**

**Kerrville, Texas 78028**

**Fax: (830) 792-2218**

**E-Mail: jgrinstead@co.kerr.tx.us**

If you have any questions regarding the nomination process or requirements for nominations, please contact Jonathan Letz at (830) 792-2216.

TRD-202201413

Jonathan Letz  
PWPG Chairman  
Plateau Water Planning Group  
Filed: April 13, 2022

## Public Utility Commission of Texas

Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 29, 2022, to relinquish a designation as an eligible telecommunications carrier (ETC) in Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Cable One VoIP LLC dba Sparklight to Relinquish its Eligible Telecommunications Carrier Designation, Docket Number 53400.

The Petition: Cable One VoIP LLC dba Sparklight requests to relinquish its eligible telecommunications carrier (ETC) designation in Texas.

Persons who wish to file a motion to intervene or comments on the application should contact the commission no later than May 9, 2022, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 53400.

TRD-202201403

Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 13, 2022

## Texas Windstorm Insurance Association

Requests for Proposals Posted - TWIA Office Build Out Project

TWIA invites all qualified Respondents to submit proposals in accordance with the requirements outlined in the below-listed Request for Proposals (RFP) issued by TWIA's Project Manager, Jones Lang LaSalle, Inc. (JLL).

The purpose of these RFPs is to obtain proposals from qualified Respondents for Project Management services related to construction and/or development of office space as described in the RFPs.

Copies of the RFPs will be posted at [www.twia.org](http://www.twia.org) as they are issued, according to the below schedule.

For more information on the requirements for proposals to be submitted by interested Respondents, please contact JLL at [Kendall.kovar@am.jll.com](mailto:Kendall.kovar@am.jll.com) and [Karlie.herron@am.jll.com](mailto:Karlie.herron@am.jll.com).

Important deadlines pertaining to these RFPs are as follows:



<b>RFP Type</b>	<b>RFP Issuance Date</b>	<b>Proposal Due Date</b>	<b>RFP Award Date</b>
General Contractor	April 19, 2022	May 3, 2022	May 10, 2022
Permit Expeditor	April 29, 2022	May 6, 2022	May 13, 2022
Special Inspections	April 29, 2022	May 6, 2022	May 13, 2022
Asbestos	April 29, 2022	May 6, 2022	May 13, 2022
Furniture	May 13, 2022	May 27, 2022	June 3, 2022
Low Voltage Cabling	June 9, 2022	June 23, 2022	June 30, 2022
Audio Visual (AV) Equipment	June 9, 2022	June 23, 2022	June 30, 2022
Security Equipment	June 9, 2022	June 23, 2022	June 30, 2022
Content Move	October 21, 2022	November 4, 2022	November 11, 2022

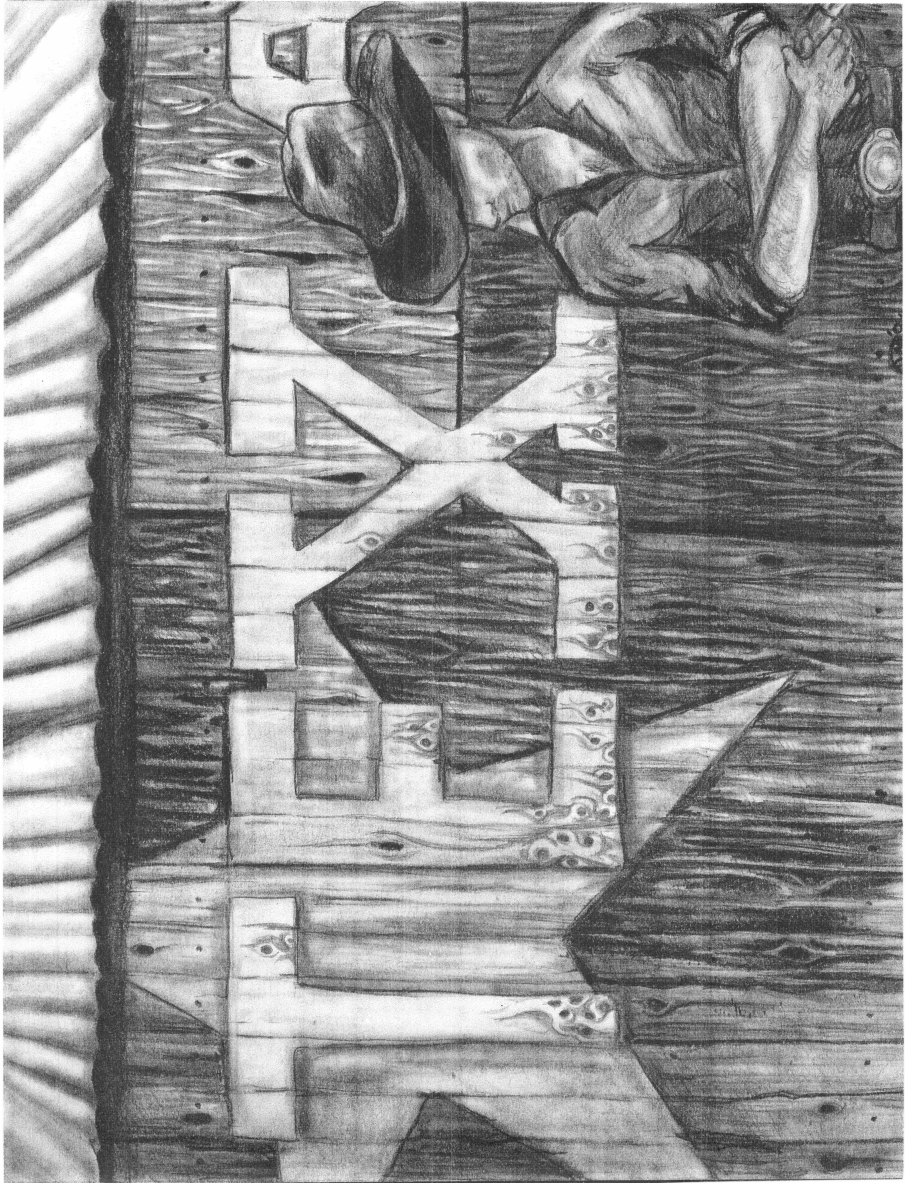
For more information, or for questions regarding submission of proposals, please contact Kendall.kovar@am.jll.com and Karlie.herron@am.jll.com.

All deadlines are subject to change at our discretion.

TRD-202201515

Sonya Palmer  
Staff Attorney  
Texas Windstorm Insurance Association  
Filed: April 20, 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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