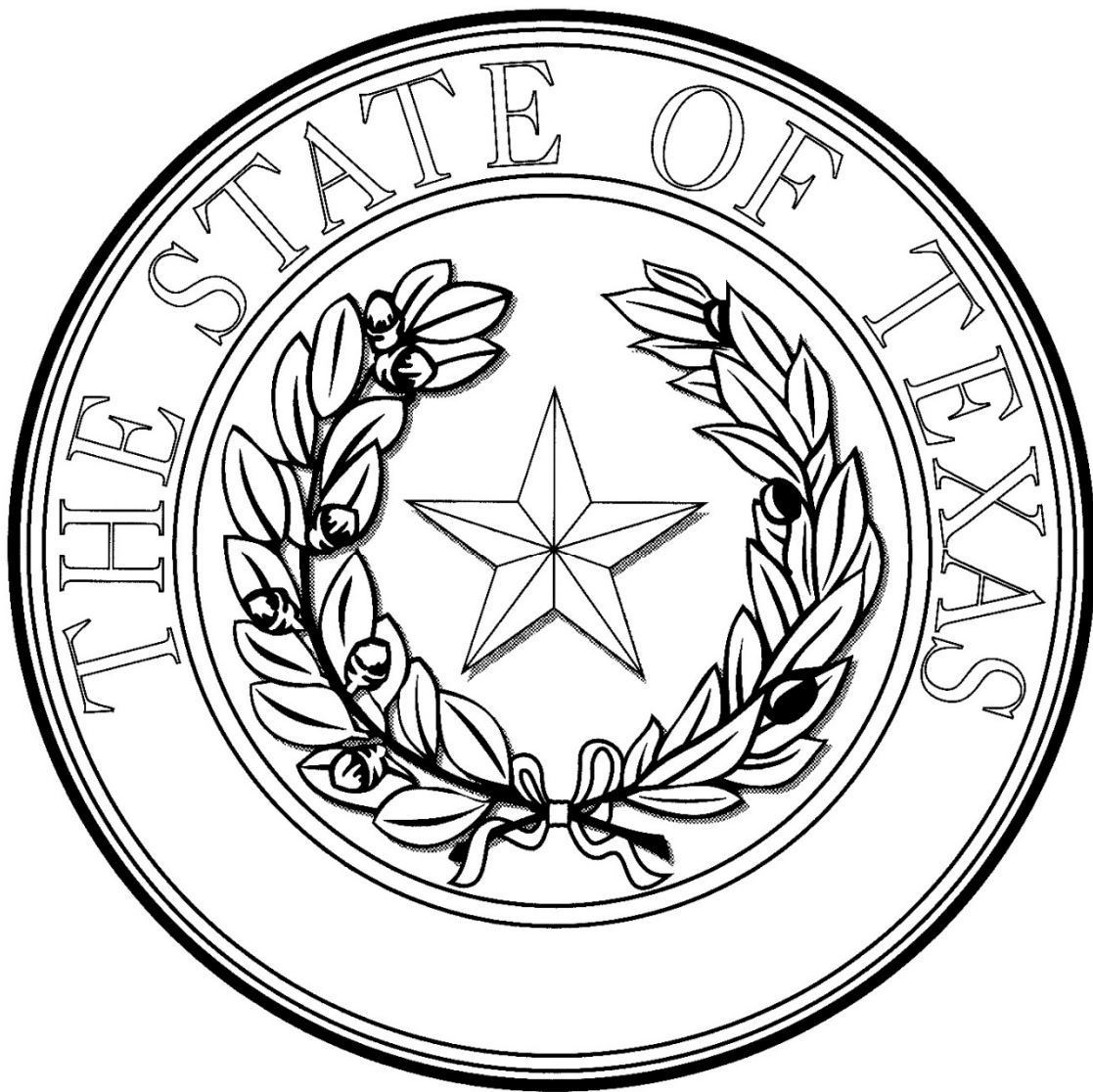

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TEXAS REGISTER

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IN THIS ISSUE

GOVERNOR

Appointments2933

ATTORNEY GENERAL

Requests for Opinions2935

EMERGENCY RULES

HEALTH AND HUMAN SERVICES COMMISSION

LICENSING

26 TAC §745.1152937

26 TAC §745.103012937

PROPOSED RULES

TEXAS HISTORICAL COMMISSION

HISTORIC SITES

13 TAC §16.72939

13 TAC §16.72940

HISTORY PROGRAMS

13 TAC §21.122942

RAILROAD COMMISSION OF TEXAS

CARBON DIOXIDE (CO2)

16 TAC §5.101, §5.1022950

16 TAC §§5.201 - 5.2072953

LP-GAS SAFETY RULES

16 TAC §§9.2, 9.6 - 9.8, 9.10, 9.16, 9.20, 9.22, 9.26, 9.51, 9.52, 9.54, 9.552974

16 TAC §§9.126, 9.130, 9.134, 9.140 - 9.1432984

16 TAC §9.202, §9.2112988

16 TAC §9.4032988

TEXAS EDUCATION AGENCY

SCHOOL DISTRICTS

19 TAC §61.10112989

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.5, 153.8, 153.9, 153.11, 153.15, 153.17, 153.20 - 153.24, 153.26, 153.28, 153.402991

TEXAS REAL ESTATE COMMISSION

PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20 - 537.23, 537.28, 537.30 - 537.33, 537.35, 537.37, 537.39 - 537.41, 537.43 - 537.48, 537.51, 537.52, 537.54 - 537.60, 537.62 - 537.653010

22 TAC §§537.26, 537.27, 537.613013

RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

22 TAC §§543.1 - 543.133014

22 TAC §§543.1 - 543.143015

HEALTH AND HUMAN SERVICES COMMISSION

LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

26 TAC §550.1083018

INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

26 TAC §551.163023

26 TAC §551.2143024

LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

26 TAC §553.353024

DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

26 TAC §559.163027

LICENSING

26 TAC §745.115, §745.1393031

26 TAC §745.86053032

MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

26 TAC §748.73034

26 TAC §§748.81, 748.83, 748.853035

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §132.173036

TEXAS COMMISSION ON FIRE PROTECTION

CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.3, 403.5, 403.153038

FIRE SUPPRESSION

37 TAC §423.3, §423.133040

ADVISORY COMMITTEES

37 TAC §463.1, §463.33042

37 TAC §§463.201, 463.203, 463.205, 463.207, 463.209, 463.211, 463.2133043

37 TAC §§463.301, 463.303, 463.305, 463.307, 463.309, 463.311, 463.3133044

37 TAC §§463.401, 463.403, 463.405, 463.407, 463.409, 463.411, 463.4133045

ADOPTED RULES

TEXAS HISTORICAL COMMISSION

ADMINISTRATION DEPARTMENT

13 TAC §11.253047

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

RULES RELATING TO PRACTICE AND PROCEDURE

22 TAC §§157.4, 157.7, 157.83047

22 TAC §157.9, §157.103048

22 TAC §157.17, §157.183048

22 TAC §§157.30 - 157.33, 157.36 - 157.383049

TEXAS REAL ESTATE COMMISSION

CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §§531.1 - 531.33049

22 TAC §§531.1 - 531.4, 531.19, 531.203049

22 TAC §531.183050

PRACTICE AND PROCEDURE

22 TAC §533.13050

22 TAC §§533.2 - 533.5, 533.7, 533.83051

22 TAC §§533.21, 533.25, 533.30, 533.32, 533.33, 533.363052

22 TAC §533.403052

GENERAL ADMINISTRATION

22 TAC §534.13052

22 TAC §§534.1 - 534.5, 534.73053

GENERAL PROVISIONS

22 TAC §§535.61, 535.63, 535.65, 535.66, 535.683054

22 TAC §§535.71, 535.73, 535.753055

22 TAC §535.400, §535.4033055

22 TAC §535.4063055

RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

22 TAC §541.1, §541.23056

DEPARTMENT OF STATE HEALTH SERVICES

PATIENT CARE--MENTAL HEALTH SERVICES

25 TAC §§405.261 - 405.263, 405.266, 405.268, 405.269, 405.272, 405.274 - 405.2763057

25 TAC §§405.264, 405.265, 405.267, 405.270, 405.271, 405.273, 405.277, 405.2793060

TEACHER RETIREMENT SYSTEM OF TEXAS

MEMBERSHIP CREDIT

34 TAC §25.213060

TEXAS CIVIL COMMITMENT OFFICE

CIVIL COMMITMENT

37 TAC §810.1563061

TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

DEFINITIONS

40 TAC §362.13061

DISPLAY OF LICENSES

40 TAC §369.2, §369.33063

INACTIVE AND RETIRED STATUS

40 TAC §371.23064

PROVISION OF SERVICES

40 TAC §372.13064

SUPERVISION

40 TAC §373.13066

RULE REVIEW

Proposed Rule Reviews

Texas Appraiser Licensing and Certification Board3069

Texas Real Estate Commission3069

Texas State Soil and Water Conservation Board3069

Texas Board of Pardons and Paroles3072

Adopted Rule Reviews

Texas Appraiser Licensing and Certification Board3072

Texas Real Estate Commission3072

Texas Department of Insurance3072

Texas State Soil and Water Conservation Board3073

TABLES AND GRAPHICS

.....3075

IN ADDITION

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice3079

Office of Consumer Credit Commissioner

Notice of Rate Ceilings3079

Texas Commission on Environmental Quality

Agreed Orders.....3079

Notice of Correction to Agreed Order Number 16.....3082

Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action.....3082

Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions.....3082

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment Comprehensive-Care Program (EPSDT-CCP) Amendment.....3083

Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft 2022 State of Texas Consolidated Plan: One-Year Action Plan.....3084

Texas Department of Insurance

Company Licensing.....3084

Texas Lottery Commission

Scratch Ticket Game Number 2404 "Sizzling Hot \$100,000"3084

Texas Department of Motor Vehicles

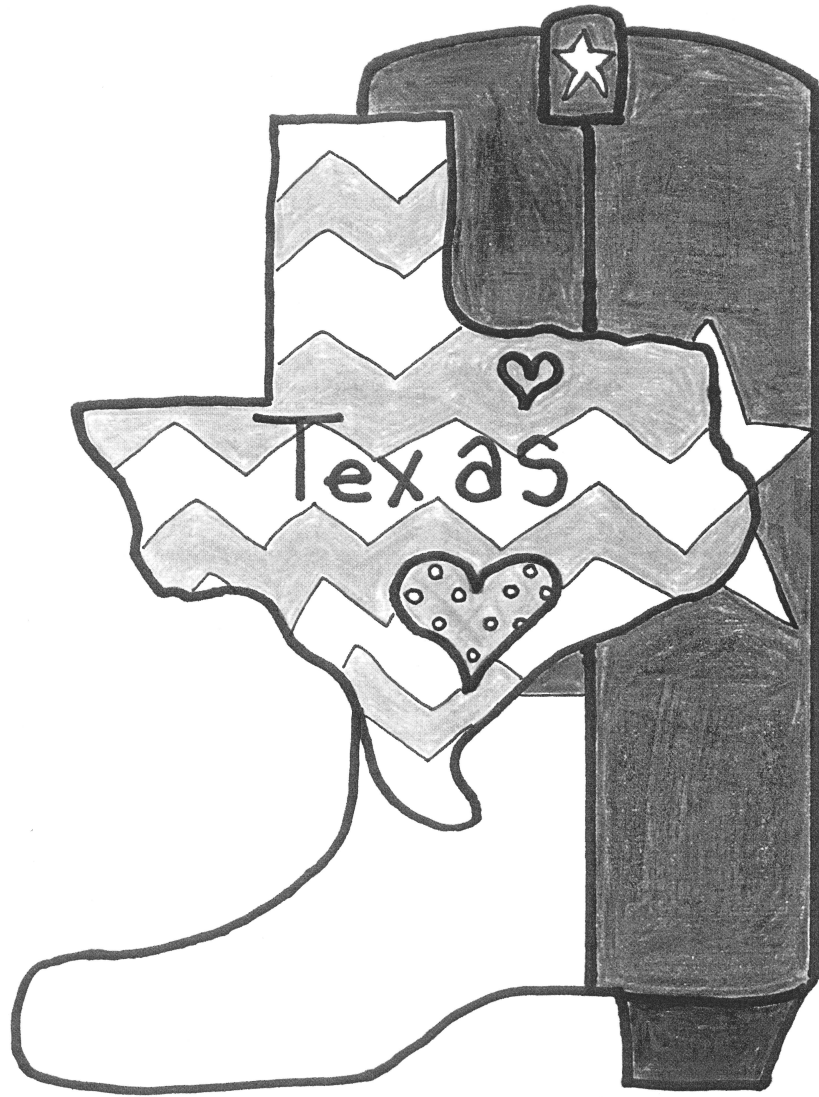
Correction of Error.....3090

North Central Texas Council of Governments

Request for Information - Platform Available to Measure the Performance of the Traffic Signals in the Dallas-Fort Worth Region.....3090

Workforce Solutions for the Heart of Texas

Request for Quotes (RFQ #13220401): Short-Term Technical Skills Training Services.....3091



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 May 6, 2022

Appointed to the Interstate Oil and Gas Compact Commission for a term to expire at the pleasure of the Governor, Jim Wright of Orange Grove, Texas (replacing Barry Williamson of Austin).

Appointed to the TexNet Technical Advisory Committee, pursuant to Education Code Sec. 67.72, for a term to expire at the pleasure of the Governor, David L. "Dave" Cannon of Midland, Texas.

Appointments for May 9, 2022

Appointed to the Housing and Health Services Coordination Council for a term to expire September 1, 2027, Kenneth Darden of Livingston, Texas (Pastor Darden is being reappointed).

Appointed to the Housing and Health Services Coordination Council for a term to expire September 1, 2027, Diana G. Delaunay of Arroyo City, Texas (Ms. Delaunay is being reappointed).

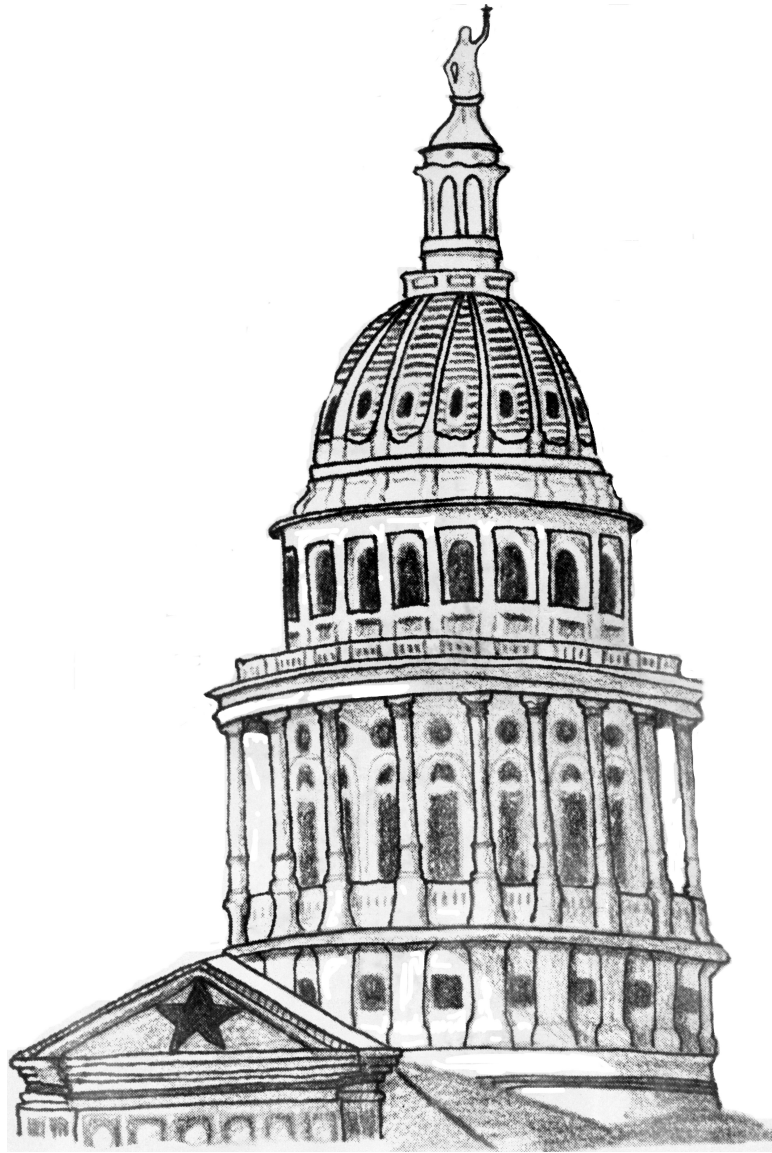
Appointed to the Housing and Health Services Coordination Council for a term to expire September 1, 2027, Jennifer M. "Jenn" Gonzalez, Ph.D. of Dallas, Texas (Dr. Gonzalez is being reappointed).

Appointed to the Housing and Health Services Coordination Council for a term to expire September 1, 2027, Joycesarah McCabe of Purmela, Texas (replacing Derrick L. Neal of Georgetown, whose term expired).

Greg Abbott, Governor

TRD-202201841





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-0458-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 Texas law prohibits the possession, sale, and distribution of child-like sex dolls (RQ-0458-KP)

Briefs requested by June 2, 2022

RQ-0459-KP

Requestor:

The Honorable Briscoe Cain

Chair, House Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authorized services a notary public may provide and fees a notary public may charge under state law (RQ-0459-KP)

Briefs requested by June 3, 2022

RQ-0460-KP

Requestor:

The Honorable Briscoe Cain

Chair, House Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a school district may withhold medical or health information about a minor child from the child's parent or legal guardian (RQ-0460-KP)

RQ-0461-KP

Requestor:

The Honorable Rene P. Montalvo

Starr County Attorney

401 N. Britton Avenue #405

Rio Grande City, Texas 78582

Re: Whether a county attorney may also serve as legal counsel to the appraisal district and the appraisal review board in the same county (RQ-0461-KP)

Briefs requested by June 9, 2022

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

TRD-202201829

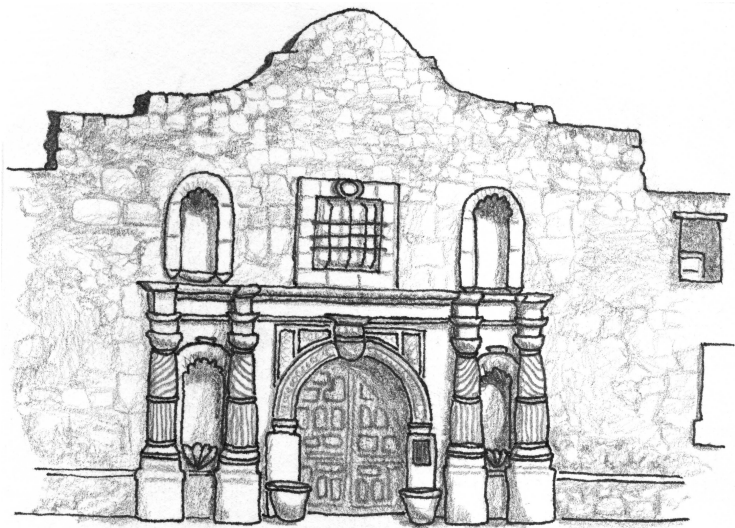
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: May 10, 2022





EMERGENCY RULES

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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION

DIVISION 2. EXEMPTIONS FROM REGULATION

26 TAC §745.115

The Health and Human Services Commission is renewing the effectiveness of emergency amended §745.115 for a 60-day period. The text of the emergency rule was originally published in the January 21, 2022, issue of the *Texas Register* (47 TexReg 137).

Filed with the Office of the Secretary of State on May 3, 2022.

TRD-202201725

Nycia Deal

Attorney

Health and Human Services Commission

Original effective date: January 9, 2022

Expiration date: July 7, 2022

For further information, please call: (512) 438-3269

SUBCHAPTER X. EMERGENCY RULES

26 TAC §745.10301

The Health and Human Services Commission is renewing the effectiveness of emergency new §745.10301 for a 60-day period. The text of the emergency rule was originally published in the January 21, 2022, issue of the *Texas Register* (47 TexReg 138).

Filed with the Office of the Secretary of State on May 3, 2022.

TRD-202201726

Nycia Deal

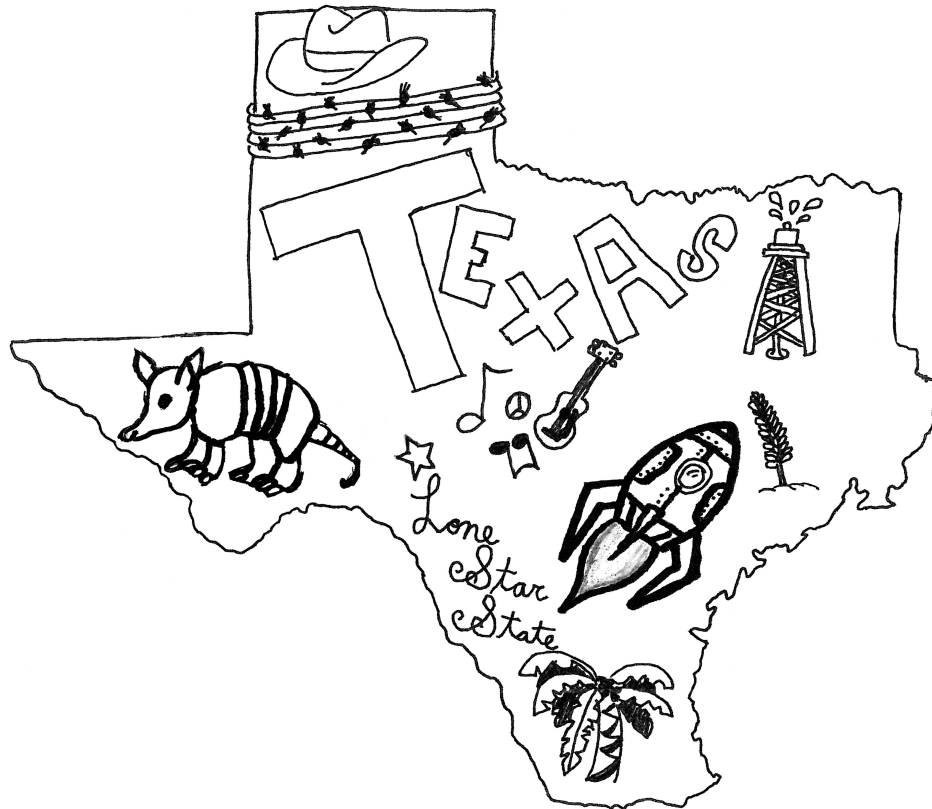
Attorney

Health and Human Services Commission

Original effective date: January 9, 2022

Expiration date: July 7, 2022

For further information, please call: (512) 438-3269



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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.7

The Texas Historical Commission (hereafter referred to as the "Commission") proposes the repeal of §16.7 of TAC, Title 13, Part 2, Chapter 16, Historic Sites, relating to Friends Organizations.

This rule repeal is needed as part of the Commission's overall effort to clarify language in order to implement a significantly revised rule on the same subject. In a separate action (Item 16.4) the THC contemporaneously proposes a new §16.7 relating to Supporting Nonprofit Partners which will replace the repealed section.

FISCAL NOTE. There will be no fiscal impact. Mark Wolfe, Executive Director, has determined that for the first five-year period the repealed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules, as proposed.

PUBLIC BENEFIT/COST NOTE. The benefit to the public will be achieved by providing an improved and enhanced structured approach in establishing formal partnerships between supporting nonprofits and State Historic Sites. Mr. Wolfe has also determined that for each year of the first five-year period the repeal is in effect, the public benefit will be a clearer set of criteria to evaluate the efficacy of partnerships between supporting nonprofit partners and historic sites, to ensure legal compliance of supporting nonprofit partners, and to establish practices that facilitate mission alignment between the historic site and the supporting nonprofit.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no effect on the local economy for the first five years that the proposed repeal is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed repeal does not impose a cost on regulated persons or entities; therefore, they are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The proposed repeal

provides an opportunity for the historic sites division to assess efficacy of partnerships between nonprofit supporting partners and State Historic Sites. There is no anticipated economic impact of this repeal. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing this repeal and therefore no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is required. There are no anticipated economic costs to the public in compliance with this repeal, as proposed.

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

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code § 2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed repeal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. This repeal is proposed under the authority of Texas Government Code § 442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §§ 442.0055 Affiliated Non-Profit Organizations; Rules; Guidelines; and 442.0052, Volunteer Services.

CROSS REFERENCE TO STATUTE. No other statutes, articles, or codes are affected by this repeal.

§16.7. *Friends Organizations.*

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 May 6, 2022.

TRD-202201799



13 TAC §16.7

The Texas Historical Commission (THC) proposes new §16.7, TAC, Title 13, Part 2, Chapter 16, Historic Sites, relating to Supporting Nonprofit Partners. In a separate action (item 16.3) the THC contemporaneously proposed repeal of §16.7 relating to Friends Organizations, which this new section will replace.

This new rule is proposed under Section 442.005 (q) Title 4 Subtitle D of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The purpose of the new rule is to implement a significantly revised rule on the same subject. The proposed new rule will include minimum standards to include in a Memorandum of Agreement between supporting nonprofits to historic sites, the historic site, and THC. The standards are based on current IRS and Secretary of State requirements for nonprofits, as well as industry best practices to achieve public transparency. The new rule provides criteria to evaluate the efficacy of partnerships between supporting nonprofit partners and historic sites, to ensure legal compliance of supporting nonprofit partners, and to establish practices that facilitate mission alignment between the historic site and the supporting nonprofit.

No other statutes, articles, or codes are affected by this new rule.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for each year of the first five-year period the new rule is in effect, the public benefit will be a more clearly defined procedure to be followed by partner organizations.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There is no effect on the local economy for the first five-year period the new rule is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new rule does not impose a cost on regulated persons or entities; therefore, they are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of the new rule and therefore no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the new rule would be in effect will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an

increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the new rule would be in effect, will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code § 2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. This new rule is proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.0055 Affiliated Non-Profit Organizations; Rules; Guidelines; and §442.0052, Volunteer Services.

CROSS REFERENCE TO STATUTE. No other statutes, articles, or codes are affected by this new rule.

§16.7. Supporting Nonprofits Partners.

(a) The Deputy Executive Director for State Historic Sites or that person's designee shall work with members of the public to establish and maintain Supporting Nonprofit Partners (SNPs) to assist the Texas Historical Commission (THC) in carrying out its mission through the preservation of, and programming at, State Historic Sites as appropriate to each site.

(b) To be considered a SNP pursuant to this section, an entity must:

(1) Either receive a 501c3 designation from the Internal Revenue Service and be incorporated in accordance with the Texas Nonprofit Corporation Act (Business Organizations Code, Chapter 22), or be fiscally sponsored by the Friends of the Texas Historical Commission (FTHC), and

(2) Within 60 days of receiving an official 501c3 designation or notice of fiscal sponsorship by the FTHC, enter into a Memorandum of Agreement with the THC, which agreement will detail the duties and responsibilities of both parties.

(c) The SNP will promptly notify THC of any change to its legal or tax-exempt status.

(d) If a SNP ceases to exist, any funds raised for the benefit of the State Historic Site will be paid to THC or to the FTHC for use at that State Historic Site.

(e) SNPs subject to these provisions:

(1) Will not hold or obligate THC funds.

(2) Will comply with all applicable rules, regulations, and laws, regarding discrimination based on race, color, national origin, sex, age, and disability.

(3) Will not use or permit the use of THC's intellectual property without the express written agreement of THC, including trademarks, logos, names and seals.

(4) Will not employ a THC employee in a paid position or provide compensation or any direct personal benefit to a THC employee.

(5) May use equipment, facilities, or services of employees of THC as long as such use follows a written agreement that provides for the payment of adequate compensation or identifies the way in which such use will benefit THC.

(6) Will prepare and send to the appropriate THC Site Manager and to the THC Community Engagement Coordinator an annual report including a list of the primary activities undertaken during the previous year, a summary of significant achievements and challenges over the previous year, and other information requested by the THC, and an annual plan of activities proposed for the following year, also making said report and plan publicly available.

(7) Will complete their annual IRS 990, 990-EZ, 990-N, or 990-PF, depending on the amount of their income and type of nonprofits status, and provide THC with proof of IRS receipt. They will also make the IRS 990 available to the general public, upon request, regardless of whether or not a SNP is required to file an IRS 990 with the IRS.

(8) Will file their articles of incorporation, by-laws, most recent financial statements, and any updates to these documents with THC. These documents will be made available to the public upon request.

(9) Will not engage in activities that would require it or a person acting on its behalf to register as a lobbyist under Texas law, Texas Government Code, Chapter 305. However, SNPs may provide information to the legislature or to other elected or appointed officials.

(10) Will not donate funds to a political campaign or endorse a political candidate.

(11) Will notify the THC Site Manager of all meetings and allow a THC representative to attend all meetings. This includes, but is not limited to, meetings of its general membership, managing board, and committees. The Site Manager must be notified by letter, email, or telephone sufficiently in advance of the meeting to allow the THC representative to attend. A SNP should also notify other SNPs associated with the property, facility, or program of all meetings and allow a representative to attend.

(12) Will raise funds in support of their associated sites only for the specific purposes authorized in writing in advance by THC.

(13) Will undertake programs that support THC's mission as agreed to in writing in advance by THC.

(14) Will decline donations that require particular action to be taken by THC unless agreed to in writing in advance by THC.

(15) Will account for all funds acquired by using Generally Accepted Accounting Principles.

(16) Will use all donations received to benefit the facility, property, or program with which the SNP is associated or further the SNP's mission related to the facility, property, or program, including donations to defray operating costs.

(17) May make unrestricted cash donations to THC, which THC may choose to designate for use for a specific project or program.

(f) The officers and directors of a SNP subject to these provisions:

(1) Will adopt and maintain a conflict-of-interest policy. This policy must include safeguards to prevent board members or their families from benefiting financially from any business decision of the SNP.

(2) Will ensure that any compensation paid to executives or managers is reasonable.

(3) Will hold at least two regular meetings of the Board of Directors annually.

(4) Will ensure that each board member and/or director is duly informed of the SNP's activities, and will provide new board members with the following:

(A) A copy of the SNP's articles of incorporation and by-laws.

(B) b. A copy of the SNP's most recent financial statements.

(C) A copy of the THC's administrative rules on SNPs and sponsorship.

(D) A copy of any current agreements between the SNP and THC.

(g) The following provisions shall govern an SNP's ability to ask for and accept sponsorships for their, or THC's projects and programs:

(1) For purposes of this section, a sponsorship is the payment of money, transfer of property, or performance of services in which there is no expectation of any substantial return benefit other than recognition or a non-substantial benefit.

(2) All sponsorship requests must have prior written approval of the THC Site Manager.

(3) All statewide sponsorships and their recognition must have prior written approval from the THC Executive Director.

(4) All local sponsorships and their recognition must have prior written approval from the THC Site Manager whose area of responsibility includes the facility, property or program to be supported by the local sponsorship.

(5) SNPs may not ask for or accept sponsorships from a person or entity in litigation with THC or determined by the THC to conflict with THC's mission or legislative mandates.

(6) Recognition for sponsors:

(A) Is allowed only in the context of the particular THC program that the sponsor has supported with a financial or in-kind contribution.

(B) Is allowed only if the contribution is greater than the cost of recognition.

(C) Will not be in the form of signage on motor vehicles or trailers owned by the state that were purchased or maintained with THC funds.

(D) Will not overshadow the project, purposes of the project, mission or branding of THC.

(7) In determining the type of recognition appropriate in each case, THC will consider:

(A) The level of contribution in terms of percentage of funds required to complete the program, event, or material.

(B) The level of contribution related to total sponsorship dollars received.

(C) The scope of exposure (for example statewide, regional, local, or a single location).

(D) The duration of exposure (for example one day, one month, one year).

(E) The sponsor's name or logo and a reference to sponsor's location may be broadcast or displayed. However, the recognition may not promote the sponsor's products, services, or facilities.

(F) THC officers and employees may not act as the agent for any SNP or donor in negotiating the terms or conditions of any agreement related to the donation of funds, services, or property to THC by the SNP or donor.

(h) THC shall maintain a list of SNPs, which shall be made available to the public upon request.

(i) THC will not hold or obligate funds or property belonging to an SNP.

(j) THC may develop model policies and procedures for use by SNPs.

(k) THC will provide a liaison to serve as a resource to SNPs and to administer the terms of an SNP's Memorandum of Agreement with THC.

(l) THC employees may serve as non-voting members of the board of an SNP only in an ex-officio capacity.

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 May 6, 2022.

TRD-202201800

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: June 19, 2022

For further information, please call: (512) 463-6100



CHAPTER 21. HISTORY PROGRAMS

SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.12

The Texas Historical Commission (Commission) proposes amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter B, §21.12, related to marker text requests. The proposed amendment to §21.12 clarifies the rule by stating that a supplemental plaque is not a choice, but rather an interim measure when funds are unavailable for immediate replacement of markers that have received approval through the historical marker request process.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

PUBLIC BENEFIT. Mr. Wolfe has also determined that for the first five-year period the amended rule is in effect, the public benefit will be the preservation of and education about state historic resources.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSI-

NESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or microbusinesses as a result of implementing these rules. Accordingly, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT. Because the proposed amendments only concern responsibilities of reviewing marker text, during the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government programs; will not result in the addition of reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKING IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

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

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission, and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

CROSS REFERENCE TO OTHER LAW. No other statutes, articles, or codes are affected by these amendments.

§21.12. Marker Text Requests.

(a) A request for a review of the text of any Official Texas Historical Marker (OTHM) that is the property of the State of Texas and which falls under the jurisdiction of the Texas Historical Commission ("Commission") may be submitted to dispute the factual accuracy of the OTHM based on verifiable, historical evidence that the marker:

- (1) includes the name of an individual or organization that is not spelled correctly;
- (2) includes a date that is not historically accurate;
- (3) includes a statement that is not historically accurate; or
- (4) has been installed at the wrong location.

(b) A request for review of OTHM text shall be submitted on a form provided by the Commission for that purpose, accompanied by no more than 10 single-sided pages of supplemental material printed in a font size no smaller than 11.

(c) OTHM review requests shall be submitted to the Commission at 1511 Colorado St., Austin, Texas [TX] 78701; by mail to P.O. Box 12276, Austin, Texas [TX] 78711; or by email to thc@thc.texas.gov. The Commission will send a copy of the request and supporting materials to the County Historical Commission (CHC) for the county in which the OTHM is located, return receipt requested. In the absence of a formally-established CHC, a copy will be submitted to the county judge, return receipt requested.

(d) The CHC or county judge shall have 10 days from the date of the receipt of the request to submit a response to the Commission if they wish to do so. The CHC's [CHC] or county judge's response shall consist of not more than 10 single-sided pages of material printed in a font no smaller than 11 and shall be signed by the chair of the CHC or by the county judge.

(e) Within 20 days of receiving the CHC's [CHC] or county judge's response to the request, or within 30 days of receiving the request itself if there is no CHC or county judge response, the staff at the Commission shall review the information submitted and respond to the requestor and to the CHC or county judge with the staff recommendation in writing, return receipt requested.

(f) During the period previously referred to in subsection (e) of this section, Commission staff may choose to refer the request to a panel of professional historians for a recommendation.

(g) The panel will consist of three professional historians: [4]

(1) the State Historian appointed by the Governor pursuant to Texas Government Code Section 3104.051; [2]

(2) the historian appointed by the Governor to serve on the Commission pursuant to Texas Government Code Section 442.002; and [3]

(3) a professional historian selected by these two historians from the faculty of a public college or university upon receiving the request. If no professional historian has been appointed by the Governor to serve on the Commission, the Governor's appointed chair of the Commission or the chair's designee will serve on the panel in place of that individual.

(h) In reaching its decision, the panel will review the same information reviewed by the staff, which shall be no more than 10 single-sided pages of supplemental material printed in a font no smaller than 11. The panel shall be chaired by the State Historian who shall determine whether the panel will meet in person or deliberate through electronic or other means.

(i) [(h)] The panel shall develop a written recommendation supported by at least two of its members. The written recommendation of the panel will be delivered to the Commission staff no later than 30 days following the panel's receipt of the background materials as provided above. If the panel is unable to develop such a recommendation, the panel chair shall so report in writing to the Commission's staff within the same 30-day period. Commission staff will consider the panel's report and send their final recommendations to the requestor and to the CHC or county judge within 15 days after receiving the panel's report, return receipt requested.

(j) [(i)] If the requestor, or the County Historical Commission or county judge are not satisfied with the staff recommendation, they may choose to file an objection with the Commission's History Programs Committee ("Committee"). Such objections must be post-marked no later than 5 days following receipt of the staff recommendation. If no such objection is filed, the staff or panel recommendation with accompanying marker text revisions will be placed on the next consent agenda of the Texas Historical Commission for approval.

(k) [(j)] Review of objections filed with the Committee shall be based on copies of the same information as was initially provided to the panel of historians under subsection (g) of this section. If the matter was not submitted to the panel of historians, the objection shall be based on the material previously submitted by the requestor or requestors and CHC or county judge to the marker staff under subsections (b) and (d) of this section, and on any additional information provided by marker staff, which shall be no more than 10 single-sided pages of supplemental material printed in a font size no smaller than 11.

(l) [(k)] The Committee shall include the objection on the agenda of its next scheduled meeting, assuming said meeting happens at least 20 days after the objection is received by the Commission. If the 20-day deadline is not met, the objection shall be on the agenda of the following meeting of the Committee.

(m) [(l)] The Committee may choose to take public testimony on the objection[-] or not. If public testimony is invited, such testimony may be limited by the Committee chair to a period of time allocated per speaker, per side (pro and con), or both.

(n) [(m)] The decision of the Committee, along with any recommendation from staff and/or the panel, shall be placed on the consent agenda of the full Commission for approval.

(o) [(n)] If a request or objection is approved by the Commission, the existing marker will be replaced [staff will determine if the existing marker requires replacement or if it can be corrected through the installation of a supplemental marker. The cost of such correction shall be paid by the Commission], subject to the availability of funds for that purpose. If such funds are not readily available, a supplemental marker may serve in the interim.

(p) [(o)] With all approved request or objections, Commission staff will write the replacement text. Markers will be produced by the contracted foundry and production will be subject to the foundry's schedule.

(q) [(p)] The Commission will not accept subsequent requests or objections that are substantively similar to a request or objection that is not already going through or has already gone through this request process. A decision not to accept a request or objection under this section may be made by the Executive Director.

(r) [(q)] A request for review may only be filed against a single marker, and no individual or organization may file more than one request for review per calendar year. The Commission hereby certifies that the section as proposed has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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 May 6, 2022.

TRD-202201798

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: June 19, 2022

For further information, please call: (512) 463-6100

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 5. CARBON DIOXIDE (CO₂)

The Railroad Commission of Texas (the "Commission") proposes amendments to §5.101 and §5.102, relating to Purpose, and Definitions, in Subchapter A; amendments to §§5.201 - 5.207, relating to Applicability and Compliance; Permit Required; Application Requirements; Notice and Hearing; Fees, Financial Responsibility, and Financial Assurance; Permit Standards; and Reporting and Record-Keeping.

The Commission proposes the amendments to implement changes made during the 87th Texas Legislative Session (Regular Session, 2021) and to reflect additional federal requirements to allow the Commission to submit an application for enforcement primacy for the federal Class VI Underground Injection Control (UIC) program.

The U.S. Environmental Protection Agency (EPA) protects underground sources of drinking water (USDWs) by regulating the injection of fluids underground for storage or disposal. The Safe Drinking Water Act (SDWA) and the Underground Injection Control (UIC) program provide the primary regulatory framework. From the early 1980s until 2010, EPA regulated five classes of wells according to the type of fluid injected, the depth of injection, and the potential to endanger USDWs. Historically, most States have sought and been granted primacy over one or more classes of wells. For example, most states have primacy over Class II wells, in which fluids are injected for natural gas and oil production, hydrocarbons storage, and enhanced recovery of oil and gas.

In 2010, EPA promulgated rules creating a sixth well class (Class VI) specifically to regulate the injection of CO₂ into deep subsurface rock formations. EPA established minimum technical criteria for permitting, site characterization, area of review and corrective action, financial responsibility, well construction, operation, mechanical integrity testing, monitoring, well-plugging, post-injection site care, and site closure requirements.

Under the SDWA, EPA may delegate its authority to implement and enforce the UIC program to States upon application. If EPA approves a State's application, the State assumes primary enforcement authority (i.e., primacy) over a class or classes of wells. Until a State receives primacy, EPA directly implements the UIC program through its regional offices.

The State of Texas established a framework for projects involving the capture, injection, sequestration or geologic storage of anthropogenic carbon dioxide in Senate Bill 1387, 81st Texas Legislature, R.S., 2009. The statutes required the state to pursue primacy for the Class VI UIC program. In recent years, interest in carbon capture and storage has increased. In June 2021, Texas took an important step towards primacy by enacting House Bill 1284 (HB 1284, 87th Legislature, R.S., 2021), which gives the Railroad Commission of Texas sole jurisdiction over carbon sequestration wells (jurisdiction had previously been shared with the Texas Commission on Environmental Quality (TCEQ)). When Texas seeks primacy over Class VI wells, its primacy application should be greatly simplified by giving a single state agency jurisdiction over Class VI permitting.

HB 1284 also amended Texas Water Code, §27.041(a) and (c), to provide the Commission with jurisdiction over a well used for geologic storage of carbon dioxide regardless of whether the well

was initially completed for that purpose or was initially completed for another purpose and is converted to the geologic storage of anthropogenic carbon dioxide.

HB 1284 also amended Texas Water Code, §27.043, to prohibit the Commission from issuing a permit for the conversion of a previously plugged and abandoned Class I injection well, including any associated waste plume, to a Class VI injection well.

HB 1284 amended Texas Water Code, Chapter 27, Subchapter C-1, by adding §27.0461, relating to letter of determination from Commission, which requires that a person making an application to the Commission for a Class VI permit must submit with the application a letter of determination from TCEQ concluding that drilling and operating an anthropogenic carbon dioxide injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ.

HB 1284 amended Texas Water Code, §27.048(b), to require that the Commission seek primacy to administer and enforce the program for the geologic storage and associated injection of anthropogenic carbon dioxide in this state, including onshore and offshore geologic storage and associated injection.

The Commission's Class II program was approved under §1425 of the SDWA, which requires that the state's program be effective in preventing endangerment of USDWs. However, EPA must review the Commission's Class VI program for geologic sequestration of carbon dioxide under §1422 of the SDWA, which requires that a state's program meet the minimum federal requirements. The proposed amendments would ensure that the Commission's regulations meet the minimum federal requirements for Class VI UIC wells.

The Commission proposes amendments in §5.101 to remove language that references the Commission having jurisdiction over only a portion of the program.

The Commission proposes to amend §5.102 to add terms defined in HB 1284 and to add other terms included in the federal Class VI UIC regulations. The Commission proposes to add a definition for "offshore" to reflect the definition included in HB 1284. The Commission proposes to add definitions for "casing," "cementing," "Class VI well," "draft permit," "exempted aquifer," "flow rate," "formation," "injection well," "lithology," "packer," "permit," "plugging," "stratum," "surface casing," and "well injection" for consistency with the federal Class VI UIC regulations.

In §5.201, the Commission proposes to amend subsection (a) to reflect the change in jurisdiction under HB 1284 and to clarify that the Commission has jurisdiction over all geologic storage of anthropogenic carbon dioxide and the injection of anthropogenic carbon dioxide in the state, both onshore and offshore.

The Commission proposes amendments in §5.201(b) to add a title to the subsection and to include the factors that the Commission will consider when determining whether there is an increased risk to underground sources of drinking water such that a Class VI permit is required.

The Commission proposes new §5.201(c) to clarify that Subchapter B of Chapter 5 does not apply to the disposal of acid gas waste generated from oil and gas activities from a single lease, unit, field, or gas processing facility. Injection of acid gas that contains carbon dioxide and was generated as part of oil and gas processing may continue to be appropriately permitted

as Class II injection. The potential need to transition from Class II to Class VI will be based on the increased risk to underground sources of drinking water related to significant storage of carbon dioxide in the reservoir, where the regulatory tools of the Class II program cannot successfully manage the risk. The Commission will consider similar factors enumerated in §5.201(b) when determining whether there is such an increased risk.

The Commission proposes to amend §5.201(d), currently subsection (c), to add language from HB 1284 to clarify that this subchapter applies regardless of whether the well was initially completed for the purpose of injection and geologic storage of anthropogenic carbon dioxide or was initially completed for another purpose and is converted to the purpose of injection and geologic storage of anthropogenic carbon dioxide except that the Commission may not issue a permit under this subchapter for the conversion of a previously plugged and abandoned Class I injection well, including any associated waste plume, to a Class VI injection well.

The Commission proposes new §5.201(e) to allow for the expansion of the areal extent of an aquifer exemption for a Class II enhanced recovery well for the exclusive purpose of Class VI injection for geologic storage in accordance with 40 Code of Federal Regulations (CFR) §146.4, relating to criteria for exempted aquifers. The Commission also proposes to adopt 40 CFR §144.7, relating to identification of underground sources of drinking water and exempted aquifers, and §146.4 by reference. Title 40 CFR §144.7 requires protection of aquifers and parts of aquifers that meet the definition of "underground source of drinking water" in 40 CFR §144.3. The section also provides for the designation of certain aquifers as exempt aquifers. Title 40 CFR §146.4 outlines the criteria an aquifer must meet for it to be designated exempt. The aquifer must not currently serve as a source of drinking water and must show it will not in the future serve as a source of drinking water because of one or more reasons listed in §146.4(b). The Commission proposes an effective date of July 1, 2022, as an estimated date for which the federal regulations will be adopted by reference. The Commission will adopt this section with a change to indicate the actual effective date.

The Commission proposes new §5.201(f) to provide for a waiver from the Class VI injection depth requirements for geologic storage to allow injection into non-USDW formations while ensuring that USDWs above and below the injection zone are protected from endangerment. The Commission also proposes to adopt 40 CFR §146.95, relating to Class VI injection depth waiver requirements, by reference. Title 40 CFR §146.95 requires that an operator seeking a waiver submit a supplemental report with its permit application. The section also specifies the required elements of the supplemental report. As with subsection (e), the effective date is proposed as July 1, 2022, but the Commission will include the correct effective date at the time of adoption.

The Commission proposes new §5.201(g) to state that the regulations do not apply to the injection of any CO₂ stream that meets the definition of a hazardous waste.

Finally, in §5.201, the Commission proposes to redesignate existing subsections (d) and (e) as new subsection (h) and (i), with no other changes.

In §5.202(a), the Commission proposes wording to require a storage operator to obtain a permit before engaging in certain activities and proposes new paragraph (2) regarding when injection may begin.

The Commission proposes to amend §5.202(d) to include language in the federal regulations at 40 CFR §124.5, relating to modification, revocation and reissuance, or termination of permits, and §144.39(a), relating to modification or revocation and reissuance of permits. Proposed new subsection (d)(1) states that permits issued pursuant to this subsection are subject to review by the Commission and allows any interested person to request that the Commission review a permit for one or more of several reasons. The request must be in writing and must contain facts to support the request. The Commission may review the permit if it determines that the request may have merit or at the Commission's initiative.

The Commission proposes new subsection (d)(2), redesignated from current subsection (d)(1), to incorporate requirements of 40 CFR §144.39(a), relating to causes for modification or for revocation and reissuance. These causes include material and substantial alterations or additions to the permitted facility or activity, new information, new regulations, and modification of compliance schedules. The Commission proposes new language to state that if the Director of the Oil and Gas Division or the director's delegate (hereinafter "director") tentatively decides to modify or revoke and reissue a permit, the director shall prepare a draft permit incorporating the proposed changes, and to clarify that the director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the director shall require the submission of a new application.

The Commission also proposes to add language in subsection (d)(2)(A)(vii) to state that in a permit modification, only those conditions to be modified shall be reopened when a new draft permit is prepared and all other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened and subject to revision just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

The Commission proposes to add new subsection (d)(2)(A)(viii) to clarify that, upon the consent of the permittee, the director may modify a permit to make the corrections or allowances for changes in the permit, without following the procedures of §5.202(e) and §5.204, to correct typographical errors; require more frequent monitoring or reporting by the permittee; change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the director; change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the director, would not interfere with the operation of the facility or its ability to meet the permit conditions; change construction requirements approved by the director pursuant to §5.206, provided that any such alteration shall comply with the requirements of this subchapter; amend a plugging and abandonment plan which has been updated under §5.203(k); or amend an injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency

and remedial response plan where the modifications merely clarify or correct the plan, as determined by the director.

The Commission proposes new §5.202(d)(2)(B) to make it consistent with the requirements in 40 CFR §144.40, relating to termination of permits, and includes the causes that could lead to termination of a permit during its term or to deny renewal of a permit consistent with 40 CFR §144.40. The proposed new subparagraph also requires the director to issue an intent to terminate a permit, draft permit and fact sheet and provide for public comment in terminating any permit.

The Commission proposes to delete existing subsection (d)(1)(A) - (E) because the reasons for modifying or revoking and reissuing a permit are enumerated in proposed new subsection (d)(2).

The Commission proposes to add new §5.202(d)(3) to state that the suitability of a facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

The Commission proposes to renumber current §5.202(d)(2) as new subsection (d)(4).

The Commission proposes to amend the title of §5.202 based on new subsection (e), which is proposed to comply with 40 CFR §124.6, relating to draft permits, and 40 CFR §124.8, relating to fact sheet.

In §5.203, the Commission proposes to amend §5.203(a) to add requirements under 40 CFR §146.91(e), relating to reporting requirements, that operators of Class VI wells must submit geologic sequestration project information directly to EPA in an electronic format approved by EPA, regardless of whether a state has primacy for the Class VI program. Such data includes the permit application and associated data, as well as all required reports, submittals, and notifications. As of the time of this proposal, EPA is requiring the use of its Geologic Sequestration Data Tool (GSDT), which is a centralized, web-based system that receives, stores, and manages Class VI data, and satisfies the Class VI electronic reporting requirement. Whether or not the State has primacy for the Class VI UIC program, an applicant is required to submit to EPA all application and reporting information through the GSDT. The Commission plans to access Class VI information through the GSDT; the Commission will not develop or require the use of a separate online system.

The Commission proposes new wording in subsection (a)(1)(B) consistent with federal regulations at 40 CFR §144.32(a), relating to requirements for signatories to permit applications, and proposes new wording in subsection (a)(1)(C) consistent with federal regulations at 40 CFR §144.32(d), relating to certification of an application or report.

The Commission proposes new §5.203(a)(2)(B) to clarify that when a geologic storage facility is owned by one person but is operated by another person, it is the operator's duty to file an application for a permit. The federal regulation at 40 CFR §144.31 relating to application for permit; authorization by permit, references "owner or operator;" however, the Commission holds the operator of the well, as identified by the Commission's Form P-4 (Certificate of Compliance and Transportation Authority), responsible.

The Commission proposes new §5.203(a)(2)(C) to add language consistent with 40 CFR §144.31(e)(6), relating to application for

permit; authorization by permit, to require that an application include a listing of all relevant permits or construction approvals for the facility received or applied for under federal or state environmental programs.

The Commission proposes new §5.203(a)(2)(D) to reflect changes made by HB 1284 to Texas Water Code, §27.0461, to require that an applicant under this subchapter submit a letter of determination from TCEQ concluding that drilling and operating a Class VI injection well or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ.

The Commission proposes new §5.203(a)(5) regarding the requirement that, if required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscience Practice Act, respectively, a licensed professional engineer or geoscientist must conduct the geologic and hydrologic evaluations required under this subchapter and must affix the appropriate seal on the resulting reports of such evaluations.

The Commission proposes to amend §5.203(d)(1)(A)(i)(III) to clarify that the initial delineation of the area of review must be estimated from initiation of injection until the plume movement ceases, for a minimum of 10 years after the end of the injection period proposed by the applicant.

The Commission proposes to amend §5.203(e)(1)(B)(i) to clarify that the operator must ensure that injection wells are cased and the casing is cemented in compliance with §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements), in addition to the requirements of this section.

The Commission proposes to amend §5.203(h)(1)(B) to clarify that internal mechanical integrity must be demonstrated by pressure testing of the tubing casing annulus.

The Commission proposes to amend §5.203(h)(1)(D) to reflect the federal standard in 40 CFR §146.89, relating to mechanical integrity, and §146.90(e), relating to testing and monitoring requirements, that, at least once per year until the injection well is plugged, amended from the current text which says five years, the operator must confirm external mechanical integrity using an approved method.

The Commission proposes to amend §5.203(h)(1)(E) to clarify the requirement to test injection wells after any workover that disturbs the seal between the tubing, packer, and casing to verify the internal mechanical integrity of the tubing and long string casing.

The Commission proposes to amend §5.203(h)(2) to delete language regarding test frequency of five years to make the language consistent with the federal requirements in 40 CFR §146.89 and §146.90 for internal and external mechanical integrity testing.

The Commission proposes to amend §5.203(h)(2)(E) to clarify that some alternative test methods may need to be approved by the Administrator of EPA consistent with 40 CFR §146.89(e).

The Commission proposes to add new §5.203(j)(2)(F) to require that a plan for monitoring, sampling, and testing after initiation of operation must include a pressure fall-off test at least once every five years unless more frequent testing is required by the director based on site-specific information consistent with fed-

eral requirements at 40 CFR §146.90(f), relating to injection well plugging.

The Commission proposes to amend §5.203(k)(1) to add the specific information required under 40 CFR §146.92(b), relating to injection well plugging, to be included in a well plugging plan.

The Commission proposes to amend §5.203(m) to add language to conform with the federal regulations. Following cessation of injection, the federal rules at 40 CFR §146.93, relating to post injection site care and site closure, require that the operator continue to conduct monitoring for at least 50 years. However, the director may approve, in consultation with EPA, an alternative timeframe other than the 50-year default, if the operator can demonstrate during the permitting process that an alternative timeframe is appropriate and ensures non-endangerment of USDWs. The federal rules require that the demonstration be based on significant, site-specific data and information and contain substantial evidence that the geologic storage project will no longer pose a risk of endangerment to USDWs at the end of the alternative post injection site care timeframe. Current Commission rules do not include a 50-year default post injection site care period. To meet the minimum federal requirements, the Commission proposes to amend §5.203(m) to include the data and information required to make a demonstration that an alternative timeframe is appropriate and ensures non-endangerment of USDWs. The proposed amendment would require additional effort for each Class VI permit application, but would provide a more appropriate, site-specific post injection site care timeframe. The Commission anticipates that the benefit of this change would be reflected in the costs associated with post injection site care monitoring. The Commission requests comments on whether the Commission should finalize the rules as proposed or adopt the federal 50-year default timeframe with the option for an alternative timeframe. In addition, the Commission requests comment on whether the Commission should consider a minimum post injection site care monitoring period.

In §5.204, the Commission proposes to amend the title from Notice and Hearing to Notice of Permit Actions and Public Comment Period; other proposed amendments comply with the federal requirements at 40 CFR 124.10, public notice of permit actions and public comment period. The federal regulations require that the Commission provide notice of a draft permit. Therefore, the Commission proposes to delete language regarding operator notice of an application under this subsection. The Commission also proposes to include language stating that notice must include information satisfying the requirements of 40 CFR §124.10(d)(1).

The Commission also proposes new §5.204(a)(5) to require that the applicant identify whether any portions of the area of review encompass an environmental justice (EJ) or Limited English Proficiency (LEP) area using U.S. Census Bureau 2018 American Community Survey data. If the area of review includes an EJ or LEP area, the proposed new wording includes the actions that the applicant shall conduct.

The Commission proposes to amend current §5.204(c) to redesignate it as subsection (b), to rename the subsection, and to make the requirements consistent with federal regulations at 40 CFR §124.12, relating to public hearings. Proposed new subsection (b)(1) clarifies that during the public comment period, an interested person may submit written comments on the draft permit and may request a hearing if one has not already been scheduled, that reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may

be required; and that the public comment period shall automatically be extended to the close of any public hearing under this section. The hearing examiner may also extend the comment period by so stating at the hearing. The Commission proposes new wording in subsection (b)(2) to state that the director must hold a public hearing whenever the director finds, on the basis of requests, a significant degree of public interest in a draft permit; and may also hold a public hearing at the director's discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

In §5.205, the Commission proposes removing the \$5 million cap in subsection (a)(4) and other nonsubstantive changes.

In §5.206, the Commission proposes amendments to make the section consistent with the federal requirements. The Commission proposes new subsection (a) consistent with 40 CFR §146.92(b) to require that all conditions applicable to all permits be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. The requirements are directly enforceable regardless of whether the requirement is a condition of the permit.

The Commission proposes to amend current §5.206(a), redesignated as subsection (b), to reorganize the subsection and to add new paragraph (8) requiring that an applicant provide a letter of determination from TCEQ concluding that drilling and operating an anthropogenic carbon dioxide injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ, consistent with HB 1284.

The Commission proposes to amend current subsection §5.206(b), redesignated as subsection (c), to require written notice to the director 30 days, rather than 48 hours, prior to conducting any well workover that involves running tubing and setting packers, beginning any workover or remedial operation, or conducting any required pressure tests or surveys, and to clarify that no such work may commence until approved by the director.

The Commission proposes to amend current §5.206(c)(2)(C), redesignated as subsection (d)(2)(C), to clarify that the Commission will include in any permit it might issue a limit of 90 percent of the fracture pressure to ensure that the injection pressure does not initiate new fractures or propagate existing fractures in the injection zone(s). In no case may injection pressure initiate fractures in the confining zone(s) or cause the movement of injection or formation fluids that endangers a USDW.

The Commission proposes to amend §5.206(d)(2)(D) to include a requirement that the operator maintain on the annulus a pressure that exceeds the operating injection pressure, unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs.

The Commission proposes to amend current subsection §5.206(d), redesignated as subsection (e), to reorganize the subsection and to add a new paragraph (2) requiring that all permits specify requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods; required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including when required, continuous monitoring; and applicable reporting requirements.

Reporting shall be no less frequent than specified in this subchapter.

The Commission proposes to amend current §5.206(e)(4), redesignated as subsection (f), to add the term "significant" consistent with the language in federal regulations at 40 CFR §146.89(g).

The Commission proposes to amend current subsection §5.206(h), redesignated as subsection (i), consistent with the federal requirements at 40 CFR §146.91(d) to require that operators notify the Director in writing 30 days in advance of any planned workover, any planned stimulation activities, other than stimulation for formation testing conducted; and any other planned test of the injection well conducted by the permittee.

The Commission proposes to amend current subsection §5.206(j), redesignated as subsection (k), to add wording in paragraph (1)(B) to require that any amendments to the post-injection site care and site closure plan must be approved by the director, be incorporated into the permit, and are subject to the permit modification requirements at §5.202 of this subchapter, as appropriate. The Commission adds this language consistent with federal regulations at 40 CFR §146.93(a)(3), relating to post-injection site care and site closure. The Commission also proposes to amend paragraph (4) to clarify that notice by the operator to the director before closure must be in writing consistent with federal regulations at 40 CFR §146.93(d).

The Commission proposes to amend current subsection §5.206(l), redesignated as subsection (m), to clarify that the operator must retain records collected during the post-injection storage facility care period for 10 years rather than five years following storage facility closure consistent with federal requirements at 40 CFR §146.93(h).

The Commission proposes to amend current subsection §5.206(n), redesignated as subsection (o), to reorganize the subsection and to replace the term "suspended" with "terminated." The Commission also proposes new paragraph (2) consistent with federal regulations at 40 CFR Part 144, Subpart E, relating to permit conditions. Federal regulations require that permits for Class VI injection wells include conditions relating to the duty to comply, the need to halt or reduce activity not a defense in an enforcement action, the need take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance, the need to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit; the need for proper operation and maintenance, including effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures; the issuance of a permit does not convey any property rights of any sort, or any exclusive privilege; the issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations; the duty to provide information; the need to allow the Commission to enter and inspect any Class VI facility or where records are kept, have access to and copy, during reasonable working hours, any records required to be kept under the conditions of the permit; sample or monitor any substance or parameter for the purpose of assuring compliance with the permit or as otherwise authorized by the Texas Water Code, §27.071, or the Texas Natural Resources Code,

§91.1012; and the inclusion of a schedule of compliance, when appropriate.

The Commission also proposes to amend subsection §5.206(o) to add new paragraph (2)(G) to state that the permittee of a geologic storage well will be required to coordinate with any operator planning to drill through the area of review (AOR) to explore for oil and gas or geothermal resources. The Commission plans to designate the AOR of geologic storage projects on the GIS maps used by the Drilling Permits Section to alert the section of a drilling permit application for a well within the AOR. A condition will be included in the drilling permit requiring the drilling permittee to notify and coordinate with the permittee of the geologic storage project of its plans to drill.

The proposed amendments to §5.206(o)(2)(G) are made pursuant to the Commission's authority in Texas Natural Resources Code Chapters 85 and 91, as well as Water Code Chapter 27.

Texas Natural Resource Code, §85.042(b) requires the Commission to make and enforce rules either general in their nature or applicable to particular fields where necessary for the prevention of actual waste of oil or operations in the field dangerous to life or property. Section 85.046 defines "waste" to mean, "among other things, specifically includes: ... underground waste or loss, however caused and whether or not the cause of the underground waste or loss is defined in this section." Section 85.202 requires the Commission to include rules and orders to prevent waste of oil and gas in drilling and producing operations, to require wells to be drilled and operated in a manner that will prevent injury to adjoining property; and to prevent oil and gas and water from escaping from the strata in which they are found into other strata. Section 91.015 states that "Operators and drillers that drill for oil or gas shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil, gas, or both oil and gas in drilling operations and shall not wastefully use oil or gas or allow oil or gas to leak or escape from natural reservoirs." Section 91.101 requires the Commission to adopt and enforce rules and orders and may issue permits relating to the drilling of exploratory wells and oil and gas wells to prevent pollution of surface water or subsurface water,

Texas Water Code, §27.051 authorizes the Commission to issue a permit for the geologic storage of carbon dioxide if it finds, among other things, that the injection and geologic storage of anthropogenic carbon dioxide will not endanger or injure any oil, gas, or other mineral formation, that, with proper safeguards, both ground and surface fresh water can be adequately protected from carbon dioxide migration or displaced formation fluids, and that the injection of anthropogenic carbon dioxide will not endanger or injure human health and safety.

In §5.207, the Commission proposes to amend subsection (a)(2)(C)(iii) and (iv) to add mass and monthly annulus fluid volume to the items that the operator must include on the semi-annual report consistent with federal regulations at 40 CFR §146.91.

The Commission proposes to amend §5.207(a)(2)(D) to move the language in subsection (a)(2)(D)(vi)(III) to new subsection (a)(3) and proposes to clarify that the director will require such revisions after significant changes to the facility.

The Commission proposes to amend §5.207(b) to clarify that the results of internal mechanical integrity tests are to be reported on Form H-5, and to require that operators submit all required reports, submittals, and notifications under this subchapter to the

director and to EPA in an electronic format approved by the EPA administrator.

The Commission proposes new subsection (c) to reflect federal regulations for signatories to reports at 40 CFR §144.32(b).

The Commission proposes new subsection (d) to require that all reports and other information be certified consistent with federal regulations at 40 CFR §144.32(d).

The Commission proposes to amend current subsection (c), re-designated as subsection (e), to clarify that the operator must retain records, including modeling inputs and data to support area of review calculations and integrity test results, for at least 10 years, rather than five years, consistent with federal regulations at 40 CFR §146.84(g), relating to area of review and corrective action.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no foreseeable implications relating to cost or revenues of state governments or local governments as a result of enforcing or administering the amendments. Commission staff responsible for permitting of disposal wells will review information required to be submitted with each disposal well application; however, these additional duties will be performed by existing personnel and within current budget constraints, resulting in no additional costs to the agency.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect, there will be no additional economic costs for persons required to comply with the proposed amendments. The federal regulations governing Class VI wells may create costs for persons required to comply. However, persons required to comply with the federal requirements must do so regardless of whether the requirements are adopted in Commission rules because if the Commission is not approved to enforce the Class VI program, the EPA will enforce the same requirements. The proposed amendments to Commission rules do not create any additional economic costs for persons required to comply.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect, the public benefit will be the Commission's evaluation of information regarding geologic storage of anthropogenic carbon dioxide, and consideration of other factors related to the prevention of pollution of surface and subsurface waters of the state and promotion of safety in accordance with Texas Natural Resources Code, §85.042 and §91.101. Achieving meaningful reductions in CO₂ emissions while preserving the benefits of our energy-intensive economy cannot be accomplished without significant deployment of carbon sequestration.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses subject to the proposed rule and project the economic impact of the rule on small businesses. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. If consistent with the health, safety, and environmental and economic welfare of the state, the analysis must consider the use of regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small

businesses. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. A "micro-business" is defined as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons who drill and complete wells under the jurisdiction of the Railroad Commission will be classified as small businesses or micro-businesses, as those terms are defined. The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas wells fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.001.

Based on the information available to the Commission regarding oil and gas operators, Ms. Savage has concluded that, of the businesses that could be affected by the proposed amendments, it is unlikely that many would be classified as small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001. Furthermore, the bulk of the proposed amendments are necessary to ensure that the Commission's regulations meet the requirements of the U.S. Environmental Protection Agency (EPA) to enable EPA to approve state primacy for the Class VI UIC program. If the state does not have primacy for the Class VI program, EPA is the permitting agency. Therefore, the costs imposed by the proposed amendments would be comparable to the costs imposed by the federal regulations.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

The Commission reviewed the proposed amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), nor would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(3). Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

During the first five years that the rules would be in full effect, the proposed amendments adopted pursuant to House Bill 1284 (87th Legislature, Regular Session) could create a new govern-

ment program because the proposed amendments will allow the Commission to apply for state primacy such that the state may administer a Class VI UIC program. However, the EPA must first approve the Commission's application for primacy. The proposed amendments would not create a new regulation because the Commission is adopting requirements that are included in existing federal regulations. Similarly, because federal regulations are in place to govern Class VI UIC activities, the proposed amendments also do not increase responsibility for persons under the Commission's jurisdiction and would not increase or decrease the number of individuals subject to the rules. If the Commission's primacy application is approved, the state will administer the Class VI UIC program rather than the EPA. Therefore, the proposed amendments could create an increase in fees paid to the Commission. The Commission does not propose amending the fees contained in §5.205 but may receive those fees if it is approved to administer the Class VI UIC program. Finally, the proposed amendments would not affect the state's economy and would not require a change in employee positions.

As part of the public comment period, the Commission will hold a virtual public hearing to receive comments on the proposed amendments to Chapter 5 and on the Commission's application to EPA for primacy of the Class VI UIC program. The first part of the hearing will consist of a brief overview by Commission staff regarding the proposed rule amendments and the Commission's application for enforcement primacy of the Class VI UIC program. The second part of the hearing will consist of public comment on both the proposed amendments and the primacy application.

The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, Commission staff will be available to discuss the proposal 30 minutes prior to the hearing. Depending on the number of persons wishing to speak, the Commission may impose a time limit so that everyone who wishes to make a public comment will have the opportunity to do so.

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to participate in the hearing and provide oral comments and/or want their participation on record must register in accordance with instructions provided on the Commission's website. Information regarding the public hearing will be posted on the Commission's website at least 10 business days in advance of the hearing, which will occur within the comment period. Instructions for participating in the hearing will be sent to those who register for the hearing. Individuals who do not wish to provide oral comments but would like to view the hearing may do so. A link to the webcast will be added on the Commission's website.

Any individual with a disability who plans to participate in the hearing and who requires auxiliary aids or services should notify the Commission as far in advance as possible so that appropriate arrangements can be made. Requests may be made to the Human Resources Department of the Railroad Commission of Texas by mail at P.O. Box 12967, Austin, Texas 78711-2967; by telephone at 512-463-6981 or TDD No. 512-463-7284; by e-mail at ADA@rrc.texas.gov; or in person at 1701 North Congress Avenue, Suite 12-110, Austin, Texas.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967;

online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, June 20, 2022. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the Commission's website at <https://rrc.texas.gov/general-counsel/rules/proposed-rules/>. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the amendments pursuant to House Bill 1284 (HB 1284, 87th Legislature, R.S., 2021), which gives the Railroad Commission of Texas sole jurisdiction over carbon sequestration wells; Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter R, as enacted by SB 1387 (81st Texas Legislature, R.S., 2009), relating to authorization for multiple or alternative uses of wells; Texas Water Code, Chapter 27, Subchapter C-1, as enacted by SB 1387 (81st Texas Legislature, R.S., 2009), which gives the Commission jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir; and Texas Water Code, Chapter 120, as enacted by SB 1387 (81st Texas Legislature, R.S., 2009), which establishes the Anthropogenic Carbon Dioxide Storage Trust Fund, a special interest-bearing fund in the state treasury, to consist of fees collected by the Commission and penalties imposed under Texas Water Code, Chapter 27, Subchapter C-1, and to be used by the Commission for only certain specified activities associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §5.101, §5.102

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052; Texas Natural Resources Code, Chapter 91, Subchapter R; and Texas Water Code, Chapters 27 and 120.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91, and Texas Water Code, Chapters 27 and 120.

§5.101. Purpose.

The purpose of this chapter is to implement the [portion of the] state program for geologic storage of anthropogenic CO₂ [over which the Railroad Commission has jurisdiction] consistent with state and federal law related to protection of underground sources of drinking water.

§5.102. *Definitions.*

The following terms, when used in Subchapter B of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected person--A person who, as a result of actions proposed by an application for a geologic storage facility permit or an amendment or modification of an existing geologic storage facility permit, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Anthropogenic carbon dioxide (CO₂)--

(A) CO₂ that would otherwise have been released into the atmosphere that has been:

(i) separated from any other fluid stream; or

(ii) captured from an emissions source, including:

(I) an advanced clean energy project as defined by Health and Safety Code, §382.003, or another type of electric generation facility; or

(II) an industrial source of emissions; and

(iii) any incidental associated substance derived from the source material for, or from the process of capturing, CO₂ described by clause (i) of this subparagraph; and

(iv) any substance added to CO₂ described by clause (i) of this subparagraph to enable or improve the process of injecting the CO₂; and

(B) does not include naturally occurring CO₂ that is produced, acquired, recaptured, recycled, and reinjected as part of enhanced recovery operations.

(3) Anthropogenic CO₂ injection well--An injection well used to inject or transmit anthropogenic CO₂ into a reservoir.

(4) Aquifer--A geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(5) Area of review (AOR)--The subsurface three-dimensional extent of the CO₂ stream plume and the associated pressure front, as well as the overlying formations, any underground sources of drinking water overlying an injection zone along with any intervening formations, and the surface area above that delineated region.

(6) Carbon dioxide (CO₂) plume--The underground extent, in three dimensions, of an injected CO₂ stream.

(7) Carbon dioxide (CO₂) stream--CO₂ that has been captured from an emission source, incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. The term does not include any CO₂ stream that meets the definition of a hazardous waste under 40 CFR [Code of Federal Regulations] Part 261.

(8) Casing--A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

(9) Cementing--The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

(10) Class VI well--Any well used to inject anthropogenic CO₂ specifically for the purpose of the long-term containment of a gaseous, liquid, or supercritical CO₂ in subsurface geologic formations.

(11) Code of Federal Regulations (CFR)--The codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

(12) [(8)] Commission--A quorum of the members of the Railroad Commission of Texas convening as a body in open meeting.

(13) [(9)] Confining zone--A geologic formation, group of formations, or part of a formation that is capable of limiting fluid movement from an injection zone.

(14) [(10)] Corrective action--Methods to assure that wells within the area of review do not serve as conduits for the movement of fluids into or between underground sources of drinking water, including the use of corrosion resistant materials, where appropriate.

(15) [(11)] Delegate--The person authorized by the director to take action on behalf of the Railroad Commission of Texas under this chapter.

(16) [(12)] Director--The director of the Oil and Gas Division of the Railroad Commission of Texas or the director's delegate.

(17) [(13)] Division--The Oil and Gas Division of the Railroad Commission of Texas.

(18) Draft permit--A document prepared indicating the director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a draft permit.

(19) [(14)] Enhanced recovery operation--Using any process to displace hydrocarbons from a reservoir other than by primary recovery, including using any physical, chemical, thermal, or biological process and any co-production project. This term does not include pressure maintenance or disposal projects.

(20) Exempted aquifer--An aquifer or its portion that meets the criteria in the definition of underground source of drinking water but which has been exempted according to the procedures in 40 CFR §144.7.

(21) [(15)] Facility closure--The point at which the operator of a geologic storage facility is released from post-injection storage facility care responsibilities.

(22) Flow rate--The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

(23) Formation--A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(24) [(16)] Formation fluid--Fluid present in a formation under natural conditions.

(25) [(17)] Fracture pressure--The pressure that, if applied to a subsurface formation, would cause that formation to physically fracture.

(26) [(18)] Geologic storage--The long-term containment of anthropogenic CO₂ in a reservoir.

(27) [(19)] Geologic storage facility or storage facility--The underground reservoir, underground equipment, injection wells,

and surface buildings and equipment used or to be used for the geologic storage of anthropogenic CO₂ and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the geologic storage of anthropogenic CO₂. The term includes the subsurface three-dimensional extent of the CO₂ plume, associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region, and any reasonable and necessary areal buffer and [3] subsurface monitoring zones[3; and pressure fronts]. The term does not include a pipeline used to transport CO₂ from the facility at which the CO₂ is captured to the geologic storage facility. The storage of CO₂ incidental to or as part of enhanced recovery operations does not in itself automatically render a facility a geologic storage facility.

(28) [(20)] Injection zone--A geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive CO₂ through a well or wells associated with a geologic storage facility.

(29) Injection well--A well into which fluids are injected.

(30) Lithology--The description of rocks on the basis of their physical and chemical characteristics.

(31) [(21)] Mechanical integrity--

(A) An anthropogenic CO₂ injection well has mechanical integrity if:

(i) there is no significant leak in the casing, tubing, or packer; and

(ii) there is no significant fluid movement into a stratum containing an underground source of drinking water through channels adjacent to the injection well bore as a result of operation of the injection well.

(B) The Commission will consider any deviations during testing that cannot be explained by the margin of error for the test used to determine mechanical integrity, or other factors, such as temperature fluctuations, to be an indication of the possibility of a significant leak and/or the possibility of significant fluid movement into a stratum containing an underground source of drinking water through channels adjacent to the injection wellbore.

(32) [(22)] Monitoring well--A well either completed or re-completed to observe subsurface phenomena, including the presence of anthropogenic CO₂, pressure fluctuations, fluid levels and flow, temperature, and/or in situ water chemistry.

(33) Offshore--The area in the Gulf of Mexico seaward of the coast that is within three marine leagues of the coast.

(34) [(23)] Operator--A person, acting for itself [himself] or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the rules and regulations regarding the permitting, physical operation, closure, and post-closure care of a geologic storage facility, or such person's authorized representative.

(35) Packer--A device lowered into a well to produce a fluid-tight seal.

(36) Permit--An authorization, license, or equivalent control document issued by the Commission to implement the requirements of chapter.

(37) [(24)] Person--A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(38) Plugging--The act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

(39) [(25)] Post-injection facility care--Monitoring and other actions (including corrective action) needed following cessation of injection to assure that underground sources of drinking water are not endangered and that the anthropogenic CO₂ remains confined to the permitted injection interval.

(40) [(26)] Pressure front--The zone of elevated pressure that is created by the injection of the CO₂ stream into the subsurface where there is a pressure differential sufficient to cause movement of the CO₂ stream or formation fluids from the injection zone into an underground source of drinking water.

(41) [(27)] Reservoir--A natural or artificially created subsurface sedimentary stratum, formation, aquifer, cavity, void, or coal seam.

(42) Stratum (or strata)--A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

(43) Surface casing--The first string of well casing to be installed in the well.

(44) [(28)] Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move beyond the confining zone.

(45) [(29)] Underground source of drinking water (USDW)--An aquifer or its portion which is not an exempt aquifer as defined in 40 CFR [Code of Federal Regulations] §146.4 and which:

(A) supplies any public water system; or

(B) contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 mg/l total dissolved solids.

(46) Well injection--The subsurface emplacement of fluids through a well.

(47) [(30)] Well stimulation--Any of several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for fluid to move more readily into the formation including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(48) [(31)] Workover--An operation in which a down-hole component of a well is repaired or the engineering design of the well is changed. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

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

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**SUBCHAPTER B. GEOLOGIC STORAGE
AND ASSOCIATED INJECTION OF
ANTHROPOGENIC CARBON DIOXIDE (CO₂)**

16 TAC §§5.201 - 5.207

The Commission proposes the amendments pursuant to House Bill 1284 (HB 1284, 87th Legislature, R.S., 2021), which gives the Railroad Commission of Texas sole jurisdiction over carbon sequestration wells; Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter R, as enacted by SB 1387 (81st Texas Legislature, R.S., 2009), relating to authorization for multiple or alternative uses of wells; Texas Water Code, Chapter 27, Subchapter C-1, as enacted by SB 1387 (81st Texas Legislature, R.S., 2009), which gives the Commission jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir; and Texas Water Code, Chapter 120, as enacted by SB 1387 (81st Texas Legislature, R.S., 2009), which establishes the Anthropogenic Carbon Dioxide Storage Trust Fund, a special interest-bearing fund in the state treasury, to consist of fees collected by the Commission and penalties imposed under Texas Water Code, Chapter 27, Subchapter C-1, and to be used by the Commission for only certain specified activities associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052; Texas Natural Resources Code, Chapter 91, Subchapter R; and Texas Water Code, Chapters 27 and 120.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91, and Texas Water Code, Chapters 27 and 120.

§5.201. Applicability and Compliance.

(a) Scope of jurisdiction. This subchapter applies to the geologic storage and associated injection of anthropogenic CO₂ in this state, both onshore and offshore; and the injection of anthropogenic CO₂ into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir. A reservoir that may be productive means an identifiable geologic unit that has had production in the past, which is similar to productive or previously productive reservoirs along the same or a similar trend, or potentially contains oil, gas, or geothermal resources based on analysis of geophysical and/or seismic data].

(b) Injection of CO₂ for enhanced recovery.

(1) This subchapter does not apply to the injection of fluid through the use of an injection well regulated under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) for the primary purpose of enhanced recovery operations from which there is reason-

able expectation of more than insignificant future production volumes of oil, gas, or geothermal energy and operating pressures are no higher than reasonably necessary to produce such volumes or rates. However, the operator of an enhanced recovery project may propose to also permit the enhanced recovery project as a CO₂ geologic storage facility simultaneously.

(2) If the director determines that an injection well regulated under §3.46 of this title should be regulated under this subchapter because the injection well is no longer being used for the primary purpose of enhanced recovery operations or there is an increased risk to USDWs, the director must notify the operator of such determination and allow the operator at least 30 days to respond to the determination and to file an application under this subchapter or cease operation of the well. In determining if there is an increased risk to USDWs, the director shall consider the following factors:

- (A) increase in reservoir pressure within the injection zone;
- (B) increase in CO₂ injection rates;
- (C) decrease in reservoir production rates;
- (D) distance between the injection zone and USDWs;
- (E) suitability of the enhanced oil or gas recovery AOR delineation;
- (F) quality of abandoned well plugs within the AOR;
- (G) the storage operator's plan for recovery of CO₂ at the cessation of injection;
- (H) the source and properties of injected CO₂; and
- (I) any additional site-specific factors as determined by the Commission.

(3) This [Additionally, this] subchapter does not preclude an enhanced oil recovery project operator from opting into a regulatory program that provides carbon credit for anthropogenic CO₂ sequestered through the enhanced recovery project.

(c) Injection of acid gas. This subchapter does not apply to the disposal of acid gas generated from oil and gas activities from a single lease, unit, field, or gas processing facility. Injection of acid gas that contains CO₂ and that was generated as part of oil and gas processing may continue to be permitted as a Class II injection well. The potential need to transition a well from Class II to Class VI shall be based on the increased risk to USDWs related to significant storage of CO₂ in the reservoir, where the regulatory tools of the Class II program cannot successfully manage the risk. In determining if there is an increased risk to USDWs, the director shall consider the factors listed in subsection (b)(2)(A), (B), and (D) through (I) of this section.

(d) [(e)] This subchapter applies to a well that is authorized as or converted to an anthropogenic CO₂ injection well for geologic storage (a Class VI injection well). This subchapter applies regardless of whether the well was initially completed for the purpose of injection and geologic storage of anthropogenic CO₂ or was initially completed for another purpose and is converted to the purpose of injection and geologic storage of anthropogenic CO₂, except that the Commission may not issue a permit under this subchapter for the conversion of a previously plugged and abandoned Class I injection well, including any associated waste plume, to a Class VI injection well.

(e) Expansion of aquifer exemption. The areal extent of an aquifer exemption for a Class II enhanced recovery well may be expanded for the exclusive purpose of Class VI injection for geologic storage if the aquifer does not currently serve as a source of drinking

water; and the total dissolved solids content is more than 3,000 milligrams per liter (mg/l) and less than 10,000 mg/l; and it is not reasonably expected to supply a public water system in accordance with 40 CFR §146.4. An operator seeking such an expansion shall submit, concurrent with the permit application, a supplemental report that complies with 40 CFR §144.7(d). The Commission adopts 40 CFR §144.7 and §146.4 by reference, effective July 1, 2022.

(f) Injection depth waiver. An operator may seek a waiver from the Class VI injection depth requirements for geologic storage to allow injection into non-USDW formations while ensuring that USDWs above and below the injection zone are protected from endangerment. An operator seeking a waiver of the requirement to inject below the lowermost USDW shall submit, concurrent with the permit application, a supplemental report that complies with 40 CFR §146.95. The Commission adopts 40 CFR §146.95 by reference, effective July 1, 2022.

(g) This subchapter does not apply to the injection of any CO₂ stream that meets the definition of a hazardous waste.

(h) ~~[(d)]~~ If a provision of this subchapter conflicts with any provision or term of a Commission order or permit, the provision of such order or permit controls.

(i) ~~[(e)]~~ The operator of a geologic storage facility must comply with the requirements of this subchapter as well as with all other applicable Commission rules and orders, including the requirements of Chapter 8 of this title (relating to Pipeline Safety Regulations) for pipelines and associated facilities.

§5.202. Permit Required, and Draft Permit and Fact Sheet.

(a) Permit required.

(1) A person shall ~~may~~ not begin drilling or operating an anthropogenic CO₂ injection well for geologic storage or constructing or operating a geologic storage facility regulated under this subchapter without first obtaining the necessary permits ~~permit(s)~~ from the Commission. Following receipt of a geologic storage facility permit issued under this subchapter, the storage operator shall obtain a permit to drill, deepen, or convert a well for storage purposes in accordance with §3.5 of this title (relating to Application to Drill, Deepen, Reenter, or Plug Back).

(2) A person may not begin injection until:

(A) construction of the well is complete;

(B) the operator has submitted to the director notice of completion of construction;

(C) the Commission has inspected or otherwise reviewed the injection well and finds it is in compliance with the conditions of the permit; and

(D) the director has issued a permit to operate the injection well.

(b) Permit amendment.

(1) An operator must file an application to amend an existing geologic storage facility permit with the director:

(A) prior to expanding the areal extent of the storage reservoir;

(B) prior to increasing the permitted injection pressure;

(C) prior to adding injection wells; or

(D) at any time that conditions at the geologic storage facility materially deviate from the conditions specified in the permit or permit application.

(2) Compliance with plan amendments required by this subchapter does not necessarily constitute a material deviation in conditions requiring an amendment of the permit.

(c) Permit transfer. An operator may transfer its geologic storage facility permit to another operator if the requirements of this subsection are met. A new operator shall ~~may~~ not assume operation of the geologic storage facility without a valid permit.

(1) Notice. An applicant must submit written notice of an intended permit transfer to the director at least 45 days prior to the date the transfer of operations is proposed to take place, unless such action could trigger U. S. Securities and Exchange Commission fiduciary and insider trading restrictions and/or rules.

(A) The applicant's notice to the director must contain:

(i) the name and address of the person to whom the geologic storage facility will be sold, assigned, transferred, leased, conveyed, exchanged, or otherwise disposed;

(ii) the name and location of the geologic storage facility and a legal description of the land upon which the storage facility is situated;

(iii) the date that the sale, assignment, transfer, lease conveyance, exchange, or other disposition is proposed to become final; and

(iv) the date that the transferring operator will relinquish possession as a result of the sale, assignment, transfer, lease conveyance, exchange, or other disposition.

(B) The person acquiring a geologic storage facility, whether by purchase, transfer, assignment, lease, conveyance, exchange, or other disposition, must notify the director in writing of the acquisition as soon as it is reasonably possible but not later than five business days after the date that the acquisition of the geologic storage facility becomes final. The director shall ~~may~~ not approve the transfer of a geologic storage facility permit until the new operator provides all of the following:

(i) the name and address of the operator from which the geologic storage facility was acquired;

(ii) the name and location of the geologic storage facility and a description of the land upon which the geologic storage facility is situated;

(iii) the date that the acquisition became or will become final;

(iv) the date that possession was or will be acquired;

and

(v) the financial assurance required by this subchapter.

(2) Evidence of financial responsibility. The operator acquiring the permit must provide the director with evidence of financial responsibility satisfactory to the director in accordance with §5.205 of this title (relating to Fees, Financial Responsibility, and Financial Assurance).

(3) Transfer of responsibility. An operator remains responsible for the geologic storage facility until the director approves in writing the sale, assignment, transfer, lease, conveyance, exchange, or other disposition and the person acquiring the storage facility complies with all applicable requirements.

(d) Modification, revocation and reissuance, or termination ~~[cancellation, or suspension]~~ of a geologic storage facility permit.

(1) Permit review. Permits are subject to review by the Commission. Any interested person may request that the Commission review a permit issued under this subchapter for one of the reasons set forth in paragraph (2) of this subsection. All requests must be in writing and must contain facts or reasons supporting the request. If the Commission determines that the request may have merit or at the Commission's initiative for one or more of the reasons set forth in paragraph (2) of this subsection, the Commission may review the permit. An interested person includes:

(A) the storage operator;

(B) local governments having jurisdiction over land within the area of review; or

(C) any person who has suffered or will suffer actual injury or economic damage.

(2) [(4)]Action by the Commission [General]. The director may modify, revoke and reissue [suspend], or terminate [cancel] a geologic storage facility permit after notice and opportunity for hearing under any of the following circumstances. [:]

(A) Causes for modification or for revocation and reissuance. The following may be causes for revocation and reissuance as well as modification:

(i) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance that justify the inclusion of permit conditions that are different from or absent in the existing permit.

(ii) New information. The director has received information that was not available at the time of permit issuance and would have justified the inclusion of different permit conditions at the time of issuance. This may include any increase greater than the permitted CO₂ storage volume, and/or changes in the chemical composition of the CO₂ stream,

(iii) New regulations. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued.

(iv) Compliance schedules. The director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(v) Basis for permit modification. The director shall modify the permit whenever the director determines that permit changes are necessary based on:

(I) a re-evaluation under §5.203(d) of this title (relating to Application Requirements);

(II) any amendments to the testing and monitoring plan under §5.203(j) of this subchapter;

(III) any amendments to the injection well plugging plan under §5.203(k) of this title;

(IV) any amendments to the post-injection site care and site closure plan under §5.203(m) of this title;

(V) any amendments to the emergency and remedial response plan under §5.203(l) of this title;

(VI) a review of monitoring and/or testing results conducted in accordance with permit requirements;

(VII) cause exists for termination under subparagraph (B) of this paragraph, and the director determines that modification or revocation and reissuance is appropriate;

(VIII) the director has received notification of a proposed transfer of the permit; or

(IX) a determination that the fluid being injected is a hazardous waste as defined in 40 CFR §261.3 either because the definition has been revised, or because a previous determination has been changed.

(vi) If the director tentatively decides to modify or revoke and reissue a permit, the director shall prepare a draft permit incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the director shall require the submission of a new application.

(vii) In a permit modification, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the existing permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(viii) Upon the consent of the permittee, the director may modify a permit to make the corrections or allowances for changes in the permit, without following the procedures of subsection (e) of this section, and §5.204 of this title (relating to Notice of Permit Actions and Public Comment Period), to:

(I) correct typographical errors;

(II) require more frequent monitoring or reporting by the permittee;

(III) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(IV) allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the director;

(V) change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the director, would not interfere with the operation of the facility or its ability to meet the permit conditions;

(VI) change construction requirements approved by the director pursuant to §5.206 of this title (relating to Permit Standards), provided that any such alteration shall comply with the requirements of this subchapter;

(VII) amend a plugging and abandonment plan which has been updated under §5.203(k) of this title; or

(VIII) amend an injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan where the modifications merely clarify or correct the plan, as determined by the director.

(B) Termination of permits.

(i) The following may be causes to terminate a permit during its term, or deny a permit renewal application:

(I) the permittee's failure to comply with any condition of the permit or applicable Commission orders or regulations;

(II) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(III) fluids are escaping or are likely to escape from the injection zone;

(IV) USDWs are likely to be endangered as a result of the continued operation of the geologic storage facility; or

(V) a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(ii) The director shall follow the applicable procedures in subsection (e) of this section, and §5.204 of this title, in terminating any permit under this section.

(iii) If the director tentatively decides to terminate a permit under this subchapter, where the permittee objects, the director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit.

[(A) There is a material change in conditions in the operation of the geologic storage facility, or there are material deviations from the information originally furnished to the director. A change in conditions at a facility that does not affect the ability of the facility to operate without causing an unauthorized release of CO₂ and/or formation fluids is not considered to be material;]

[(B) Underground sources of drinking water are likely to be endangered as a result of the continued operation of the geologic storage facility;]

[(C) There are substantial violations of the terms and provisions of the permit or of applicable Commission orders or regulations;]

[(D) The operator misrepresented material facts during the permit application or issuance process; or]

[(E) Fluids are escaping or are likely to escape from the injection zone.]

(3) Facility siting. Suitability of the facility location shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

(4) [(2)] Emergency shutdown. Notwithstanding the provisions of paragraph (2) [(4)] of this subsection, in the event of an emergency that threatens endangerment to USDWs [underground sources of drinking water] or to life or property, or an imminent threat of uncontrolled release of CO₂, the director may immediately order suspension of the operation of the geologic storage facility until a final order is issued pursuant to a hearing, if any.

(e) Draft permit and fact sheet.

(1) Draft permit; notice of intent to deny.

(A) Once a geologic storage facility permit application is complete, the director shall decide whether to prepare a draft permit or to deny the application.

(B) If the director tentatively decides to deny the permit application, the director shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the director's final decision is that the tentative decision to deny the permit application was incorrect, the director shall withdraw the notice of intent to deny and proceed to prepare a draft permit.

(C) If the director decides to prepare a draft permit, the draft permit shall contain the permit conditions required under §5.206 of this title (relating to Permit Standards).

(2) Fact sheet.

(A) The director shall prepare a fact sheet for every draft permit. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.

(B) The director shall send this fact sheet to the applicant and, on request, to any other person.

(C) The fact sheet shall include, when applicable:

(i) a brief description of the type of facility or activity which is the subject of the draft permit;

(ii) the quantity of CO₂ proposed to be injected and stored;

(iii) the reasons why any requested variances or alternatives to required standards do or do not appear justified;

(iv) a description of the procedures for reaching a final decision on the draft permit including:

(I) the beginning and ending dates of the comment period;

(II) the address where comments will be received;

(III) The date, time, and location of the storage facility permit hearing, if a hearing has been scheduled; and

(IV) any other procedures by which the public may participate in the final decision; and

(v) the name and telephone number of a person to contact for additional information.

§5.203. Application Requirements.

(a) General.

(1) Form and filing; signatories; certification.

(A) Form and filing. Each applicant for a permit to construct and operate a geologic storage facility must file an application with the division in Austin on a form prescribed by the Commission. The applicant must file ~~one copy of~~ the application and all attachments with the division and with EPA Region 6 in an electronic format approved by EPA. On the same date, the applicant must file one copy with each ~~the~~ appropriate district office ~~office(s)~~ and one copy with the Executive Director of the Texas Commission on Environmental Quality.

(B) Signatories to permit applications. An applicant must ensure that the application is executed by a party having knowledge of the facts entered on the form and included in the required attachments. All permit applications shall be signed as specified in this subparagraph:

(i) For a corporation, the permit application shall be signed by a responsible corporate officer. For the purpose of this sec-

tion, a responsible corporate officer means a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision making functions for the corporation, or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) For a partnership or sole proprietorship, the permit application shall be signed by a general partner or the proprietor, respectively.

(iii) For a municipality, State, Federal, or other public agency, the permit application shall be signed by either a principal executive officer or ranking elected official. [If otherwise required under Occupations Code, Chapter 1001, relating to Texas Engineering Practices Act, or Chapter 1002, relating to Texas Geoscientists Practices Act, respectively, a licensed professional engineer or geoscientist must conduct the geologic and hydrologic evaluations required under this section and must affix the appropriate seal on the resulting reports of such evaluations.]

(C) Certification. Any person signing a permit application or permit amendment application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(2) General information.

(A) On the application, the applicant must include the name, mailing address, and location of the facility for which the application is being submitted and the operator's name, address, telephone number, Commission Organization Report number, and ownership of the facility.

(B) When a geologic storage facility is owned by one person but is operated by another person, it is the operator's duty to file an application for a permit.

(C) The application must include a listing of all relevant permits or construction approvals for the facility received or applied for under federal or state environmental programs;

(D) A person making an application to the director for a permit under this subchapter must submit a copy of the application to the Texas Commission on Environmental Quality (TCEQ) and must submit to the director a letter of determination from TCEQ concluding that drilling and operating an anthropogenic CO₂ injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ. The letter must be submitted to the director before any permit under this subchapter may be issued.

(3) Application completeness. The Commission shall [may] not issue a permit before receiving a complete application. A permit application is complete when the director determines that the application contains information addressing each application

requirement of the regulatory program and all information necessary to initiate the final review by the director.

(4) Reports. An applicant must ensure that all descriptive reports are prepared by a qualified and knowledgeable person and include an interpretation of the results of all logs, surveys, sampling, and tests required in this subchapter. The applicant must include in the application a quality assurance and surveillance plan for all testing and monitoring, which includes, at a minimum, validation of the analytical laboratory data, calibration of field instruments, and an explanation of the sampling and data acquisition techniques.

(5) If otherwise required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, a licensed professional engineer or geoscientist must conduct the geologic and hydrologic evaluations required under this subchapter and must affix the appropriate seal on the resulting reports of such evaluations.

(b) Surface map and information. Only information of public record is required to be included on this map.

(1) The applicant must file with the director a surface map delineating the proposed location [location(s)] of any injection wells [well(s)] and the boundary of the geologic storage facility for which a permit is sought and the applicable AOR [area of review].

(2) The applicant must show within the AOR [area of review] on the map the number or name and the location of:

(A) all known artificial penetrations through the confining zone, including injection wells, producing wells, inactive wells, plugged wells, or dry holes;

(B) the locations of cathodic protection holes, subsurface cleanup sites, bodies of surface water, springs, surface and subsurface mines, quarries, and water wells; and

(C) other pertinent surface features, including pipelines, roads, and structures intended for human occupancy.

(3) The applicant must identify on the map any known or suspected faults expressed at the surface.

(c) Geologic, geochemical, and hydrologic information.

(1) The applicant must submit a descriptive report prepared by a knowledgeable person that includes an interpretation of the results of appropriate logs, surveys, sampling, and testing sufficient to determine the depth, thickness, porosity, permeability, and lithology of, and the geochemistry of any formation fluids in, all relevant geologic formations.

(2) The applicant must submit information on the geologic structure and reservoir properties of the proposed storage reservoir and overlying formations, including the following information:

(A) geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the area from the ground surface to the base of the injection zone within the AOR [area of review] that indicate the general vertical and lateral limits of all USDWs [underground sources of drinking water] within the AOR [area of review], their positions relative to the storage reservoir and the direction of water movement, where known;

(B) the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of, and the geochemistry of any formation fluids in, the storage reservoir and confining zone and any other relevant geologic formations, including geology/facies changes based on field data, which may include geologic cores, outcrop data, seismic surveys, well logs, and lithologic descriptions,

and the analyses of logging, sampling, and testing results used to make such determinations;

(C) the location, orientation, and properties of known or suspected transmissive faults or fractures that may transect the confining zone within the AOR [area of review] and a determination that such faults or fractures would not compromise containment;

(D) the seismic history, including the presence and depth of seismic sources, and a determination that the seismicity would not compromise containment;

(E) geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone;

(F) a description of the formation testing program used and the analytical results used to determine the chemical and physical characteristics of the injection zone and the confining zone; and

(G) baseline geochemical data for subsurface formations that will be used for monitoring purposes, including all formations containing USDWs [underground sources of drinking water] within the AOR [area of review].

(d) AOR [Area of review] and corrective action. This subsection describes the standards for the information regarding the delineation of the AOR [area of review], the identification of penetrations, and corrective action that an applicant must include in an application.

(1) Initial delineation of the AOR [area of review] and initial corrective action. The applicant must delineate the AOR [area of review], identify all wells that require corrective action, and perform corrective action on those wells. Corrective action may be phased.

(A) Delineation of AOR [area of review].

(i) Using computational modeling that considers the volumes and the physical and chemical properties of the injected CO₂ stream, the physical properties of the formation into which the CO₂ stream is to be injected, and available data including data available from logging, testing, or operation of wells, the applicant must predict the lateral and vertical extent of migration for the CO₂ plume and formation fluids and the pressure differentials required to cause movement of injected fluids or formation fluids into a USDW [an underground source of drinking water] in the subsurface for the following time periods:

(I) five years after initiation of injection;

(II) from initiation of injection to the end of the injection period proposed by the applicant; and

(III) from initiation of injection until the plume movement ceases, for a minimum of [tø] 10 years after the end of the injection period proposed by the applicant.

(ii) The applicant must use a computational model that:

(I) is based on geologic and reservoir engineering information collected to characterize the injection zone and the confining zone;

(II) is based on anticipated operating data, including injection pressures, rates, and total volumes over the proposed duration of injection;

(III) takes into account relevant geologic heterogeneities and data quality, and their possible impact on model predictions;

(IV) considers the physical and chemical properties of injected and formation fluids; and

(V) considers potential migration through known faults, fractures, and artificial penetrations and beyond lateral spill points.

(iii) The applicant must provide the name and a description of the model, software, the assumptions used to determine the AOR [area of review], and the equations solved.

(B) Identification and table of penetrations. The applicant must identify, compile, and submit a table listing all penetrations, including active, inactive, plugged, and unplugged wells and underground mines in the AOR [area of review] that may penetrate the confining zone, that are known or reasonably discoverable through specialized knowledge or experience. The applicant must provide a description of each penetration's type, construction, date drilled or excavated, location, depth, and record of plugging and/or completion or closure. Examples of specialized knowledge or experience may include reviews of federal, state, and local government records, interviews with past and present owners, operators, and occupants, reviews of historical information (including aerial photographs, chain of title documents, and land use records), and visual inspections of the facility and adjoining properties.

(C) Corrective action. The applicant must demonstrate whether each of the wells on the table of penetrations has or has not been plugged and whether each of the underground mines (if any) on the table of penetrations has or has not been closed in a manner that prevents the movement of injected fluids or displaced formation fluids that may endanger USDWs [underground sources of drinking water] or allow the injected fluids or formation fluids to escape the permitted injection zone. The applicant must perform corrective action on all wells and underground mines in the AOR [area of review] that are determined to need corrective action. The operator must perform corrective action using materials suitable for use with the CO₂ stream. Corrective action may be phased.

(2) Area of review and corrective action plan. As part of an application, the applicant must submit an AOR [area of review] and corrective action plan that includes the following information:

(A) the method for delineating the AOR [area of review], including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based;

(B) for the AOR [area of review], a description of:

(i) the minimum frequency subject to the annual certification pursuant to §5.206(f) of this title (relating to Permit Standards) at which the applicant proposes to re-evaluate the AOR [area of review] during the life of the geologic storage facility;

(ii) how monitoring and operational data will be used to re-evaluate the AOR [area of review]; and

(iii) the monitoring and operational conditions that would warrant a re-evaluation of the AOR [area of review] prior to the next scheduled re-evaluation; and

(C) a corrective action plan that describes:

(i) how the corrective action will be conducted;

(ii) how corrective action will be adjusted if there are changes in the AOR [area of review];

(iii) if a phased corrective action is planned, how the phasing will be determined; and

(iv) how site access will be secured for future corrective action.

(e) Injection well construction.

(1) Criteria for construction of anthropogenic CO₂ injection wells. This paragraph establishes the criteria for the information about the construction and casing and cementing of, and special equipment for, anthropogenic CO₂ injection wells that an applicant must include in an application.

(A) General. The operator of a geologic storage facility must ensure that all anthropogenic CO₂ injection wells are constructed and completed in a manner that will:

(i) prevent the movement of injected CO₂ or displaced formation fluids into any unauthorized zones or into any areas where they could endanger USDWs [underground sources of drinking water];

(ii) allow the use of appropriate testing devices and workover tools; and

(iii) allow continuous monitoring of the annulus space between the injection tubing and long string casing.

(B) Casing and cementing of anthropogenic CO₂ injection wells.

(i) The operator must ensure that injection wells are cased and the casing cemented in compliance with §3.13 of this title (relating to Casing, Cementing, Drilling, Well Control, and Completion Requirements), in addition to the requirements of this section.

(ii) Casing, cement, cement additives, and/or other materials used in the construction of each injection well must have sufficient structural strength and must be of sufficient quality and quantity to maintain integrity over the design life of the injection well. All well materials must be suitable for use with fluids with which the well materials may be expected to come into contact and must meet or exceed test standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards as approved by the director.

(iii) Surface casing must extend through the base of the lowermost USDW [underground source of drinking water] above the injection zone and must be cemented to the surface.

(iv) Circulation of cement may be accomplished by staging. The director may approve an alternative method of cementing in cases where the cement cannot be circulated to the surface, provided the applicant can demonstrate by using logs that the cement does not allow fluid movement between the casing and the well bore.

(v) At least one long string casing, using a sufficient number of centralizers, must extend through the injection zone. The long string casing must isolate the injection zone and other intervals as necessary for the protection of USDWs [underground sources of drinking water] and to ensure confinement of the injected and formation fluids to the permitted injection zone using cement and/or other isolation techniques.

(vi) The applicant must verify the integrity and location of the cement using technology capable of radial evaluation of cement quality and identification of the location of channels to ensure that USDWs [underground sources of drinking water] will not be endangered.

(vii) The director may exempt existing wells that have been associated with injection of CO₂ for the purpose of enhanced recovery from provisions of these casing and cementing requirements

if the applicant demonstrates that the well construction meets the general performance criteria in subparagraph (A) of this paragraph.

(C) Special equipment.

(i) Tubing and packer. All injection wells must inject fluids through tubing set on a mechanical packer. Packers must be set no higher than 100 feet above the top of the permitted injection interval or at a location approved by the director.

(ii) Pressure observation valve. The wellhead of each injection well must be equipped with a pressure observation valve on the tubing and each annulus of the well.

(2) Construction information. The applicant must provide the following information for each well to allow the director to determine whether the proposed well construction and completion design will meet the general performance criteria in paragraph (1) of this subsection:

(A) depth to the injection zone;

(B) hole size;

(C) size and grade of all casing and tubing strings (e.g., wall thickness, external diameter, nominal weight, length, joint specification and construction material, tubing tensile, burst, and collapse strengths);

(D) proposed injection rate (intermittent or continuous), maximum proposed surface injection pressure, and maximum proposed volume of the CO₂ stream;

(E) type of packer and packer setting depth;

(F) a description of the capability of the materials to withstand corrosion when exposed to a combination of the CO₂ stream and formation fluids;

(G) down-hole temperatures and pressures;

(H) lithology of injection and confining zones;

(I) type or grade of cement and additives;

(J) chemical composition and temperature of the CO₂ stream; and

(K) schematic drawings of the surface and subsurface construction details.

(3) Well construction plan. The applicant must submit an injection well construction plan that meets the criteria in paragraph (1) of this subsection.

(4) Well stimulation plan. The applicant must submit, as applicable, a description of the proposed well stimulation program and a determination that well stimulation will not compromise containment.

(f) Plan for logging, sampling, and testing of injection wells after permitting but before injection. The applicant must submit a plan for logging, sampling, and testing of each injection well after permitting but prior to injection well operation. The plan need not include identical logging, sampling, and testing procedures for all wells provided there is a reasonable basis for different procedures. Such plan is not necessary for existing wells being converted to anthropogenic CO₂ injection wells in accordance with this subchapter, to the extent such activities already have taken place. The plan must describe the logs, surveys, and tests to be conducted to verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in, the formations that are to be used for monitoring, storage, and confinement to assure conformance with the injection well con-

struction requirements set forth in subsection (e) of this section, and to establish accurate baseline data against which future measurements may be compared. The plan must meet the following criteria and must include the following information.

(1) Logs and surveys of newly drilled and completed injection wells.

(A) During the drilling of any hole that is constructed by drilling a pilot hole that is enlarged by reaming or another method, the operator must perform deviation checks at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.

(B) Before surface casing is installed, the operator must run appropriate logs, such as resistivity, spontaneous potential, and caliper logs.

(C) After each casing string is set and cemented, the operator must run logs, such as a cement bond log, variable density log, and a temperature log, to ensure proper cementing.

(D) Before long string casing is installed, the operator must run logs appropriate to the geology, such as resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs, to gather data necessary to verify the characterization of the geology and hydrology.

(2) Testing and determination of hydrogeologic characteristics of injection and confining zone.

(A) Prior to operation, the operator must conduct tests to verify hydrogeologic characteristics of the injection zone.

(B) The operator must perform an initial pressure fall-off or other test and submit to the director a written report of the results of the test, including details of the methods used to perform the test and to interpret the results, all necessary graphs, and the testing log, to verify permeability, injectivity, and initial pressure using water or CO₂.

(C) The operator must determine or calculate the fracture pressures for the injection and confining zone. ~~The~~ [If the fracture pressures are determined through calculation, the] Commission will include in any permit it might issue a limit of 90% of the [calculated] fracture pressure to ensure that the injection pressure does not exceed the fracture pressure.

(3) Sampling.

(A) The operator must record and submit the formation fluid temperature, pH, and conductivity, the reservoir pressure, and the static fluid level of the injection zone.

(B) The operator must submit analyses of whole cores or sidewall cores representative of the injection zone and confining zone and formation fluid samples from the injection zone. The director may accept data from cores and formation fluid samples from nearby wells or other data if the operator can demonstrate to the director that such data are representative of conditions at the proposed injection well.

(g) Compatibility determination. Based on the results of the formation testing program required by subsection (f) of this section, the applicant must submit a determination of the compatibility of the CO₂ stream with:

- (1) the materials to be used to construct the well;
- (2) fluids in the injection zone; and
- (3) minerals in both the injection and the confining zone.

(h) Mechanical integrity testing.

(1) Criteria. This paragraph establishes the criteria for the mechanical integrity testing plan for anthropogenic CO₂ injection wells that an applicant must include in an application.

(A) Other than during periods of well workover in which the sealed tubing-casing annulus is of necessity disassembled for maintenance or corrective procedures, the operator must maintain mechanical integrity of the injection well at all times.

(B) Before beginning injection operations and at least once every five years thereafter, the operator must demonstrate internal mechanical integrity for each injection well by pressure testing the tubing-casing annulus.

(C) Following an initial annulus pressure test, the operator must continuously monitor injection pressure, rate, injected volumes, and pressure on the annulus between tubing and long string casing to confirm that the injected fluids are confined to the injection zone.

(D) At least once per year until the injection well is plugged [every five years], the operator must confirm the absence of significant fluid movement into a USDW through channels adjacent to the injection wellbore (external integrity) [that the injected fluids are confined to the injection zone] using a method approved by the director (e.g., diagnostic surveys such as oxygen-activation logging or temperature or noise logs).

(E) The operator must test injection wells after any workover that disturbs the seal between the tubing, packer, and casing in a manner that verifies internal mechanical integrity of the tubing and long string casing.

(F) An operator must either repair and successfully retest or plug a well that fails a mechanical integrity test.

(2) Mechanical integrity testing plan. The applicant must prepare and submit a mechanical integrity testing plan as part of a permit application. ~~[The plan must include a schedule for the performance of a series of tests at a minimum frequency of five years.]~~ The performance tests must be designed to demonstrate the internal and external mechanical integrity of each injection well. These tests may include:

- (A) a pressure test with liquid or inert gas;
- (B) a tracer survey such as oxygen-activation logging;
- (C) a temperature or noise log;
- (D) a casing inspection log; and/or

(E) any alternative method approved by the director, and if necessary by the Administrator of EPA under 40 CFR §146.89(e), that provides equivalent or better information approved by the director.

(i) Operating information.

(1) Operating plan. The applicant must submit a plan for operating the injection wells and the geologic storage facility that complies with the criteria set forth in ~~§5.206(d)~~ [§5.206(e)] of this title, and that outlines the steps necessary to conduct injection operations. The applicant must include the following proposed operating data in the plan:

- (A) the average and maximum daily injection rates and volumes of the CO₂ stream;
- (B) the average and maximum surface injection pressure;
- (C) the sources [source(s)] of the CO₂ stream and the volume of CO₂ from each source; and

(D) an analysis of the chemical and physical characteristics of the CO₂ stream prior to injection.

(2) Maximum injection pressure. The director will approve a maximum injection pressure limit that:

(A) considers the risks of tensile failure and, where appropriate, geomechanical or other studies that assess the risk of tensile failure and shear failure;

(B) with a reasonable degree of certainty will avoid initiation or propagation of fractures in the confining zone or cause otherwise non-transmissive faults transecting the confining zone to become transmissive; and

(C) in no case may cause the movement of injection fluids or formation fluids in a manner that endangers USDWs [underground sources of drinking water].

(j) Plan for monitoring, sampling, and testing after initiation of operation.

(1) The applicant must submit a monitoring, sampling, and testing plan for verifying that the geologic storage facility is operating as permitted and that the injected fluids are confined to the injection zone.

(2) The plan must include the following:

(A) the analysis of the CO₂ stream prior to injection with sufficient frequency to yield data representative of its chemical and physical characteristics;

(B) the installation and use of continuous recording devices to monitor injection pressure, rate, and volume, and the pressure on the annulus between the tubing and the long string casing, except during workovers;

(C) after initiation of injection, the performance on a semi-annual basis of corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion to ensure that the well components meet the minimum standards for material strength and performance set forth in subsection (e)(1)(A) of this section. The operator must report the results of such monitoring annually. Corrosion monitoring may be accomplished by:

(i) analyzing coupons of the well construction materials in contact with the CO₂ stream;

(ii) routing the CO₂ stream through a loop constructed with the materials used in the well and inspecting the materials in the loop; or

(iii) using an alternative method, materials, or time period approved by the director;

(D) monitoring of geochemical and geophysical changes, including:

(i) periodic sampling of the fluid temperature, pH, conductivity, reservoir pressure and static fluid level of the injection zone and monitoring for pressure changes, and for changes in geochemistry, in a permeable and porous formation near to and above the top confining zone;

(ii) periodic monitoring of the quality and geochemistry of a USDW [an underground source of drinking water] within the AOR [area of review] and the formation fluid in a permeable and porous formation near to and above the top confining zone to detect any movement of the injected CO₂ through the confining zone into that monitored formation;

(iii) the location and number of monitoring wells justified on the basis of the AOR [area of review], injection rate and volume, geology, and the presence of artificial penetrations and other factors specific to the geologic storage facility; and

(iv) the monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data collected under subsection (c)(2) of this section and any modeling results in the AOR [area of review] evaluation;

(E) tracking the extent of the CO₂ plume and the position of the pressure front by using indirect, geophysical techniques, which may include seismic, electrical, gravity, or electromagnetic surveys and/or down-hole CO₂ detection tools; ~~and~~

(F) A pressure fall-off test at least once every five years unless more frequent testing is required by the director based on site-specific information; and

(G) ~~[(F)]~~ additional monitoring as the director may determine to be necessary to support, upgrade, and improve computational modeling of the AOR [area of review] evaluation and to determine compliance with the requirements that the injection activity not allow the movement of fluid containing any contaminant into USDWs [underground sources of drinking water] and that the injected fluid remain within the permitted interval.

(k) Well plugging plan. The applicant must submit a well plugging plan for all injection wells and monitoring wells that penetrate the base of usable quality water that includes the following:

(1) a proposal for plugging all monitoring wells that penetrate the base of usable quality water and all injection wells upon abandonment in accordance with §3.14 of this title (relating to Plugging), in addition to the requirements of this section. The proposal must include:[:]

(A) the type and number of plugs to be used;

(B) the placement of each plug, including the elevation of the top and bottom of each plug;

(C) the type, grade, and quantity of material to be used in plugging and information to demonstrate that the material is compatible with the CO₂ stream; and

(D) the method of placement of the plugs;

(2) proposals for activities to be undertaken prior to plugging an injection well, specifically:

(A) flushing each injection well with a buffer fluid;

(B) performing tests or measures to determine bottom-hole reservoir pressure;

(C) performing final tests to assess mechanical integrity; and

(D) ensuring that the material to be used in plugging must be compatible with the CO₂ stream and the formation fluids;

(3) a proposal for giving notice of intent to plug monitoring wells that penetrate the base of usable quality water and all injection wells. The applicant's plan must ensure that:

(A) the operator notifies the director at least 60 days before plugging a well. At this time, if any changes have been made to the original well plugging plan, the operator must also provide a revised well plugging plan. At the discretion of the director, an operator may be allowed to proceed with well plugging on a shorter notice period; and

(B) the operator will file a notice of intention to plug and abandon (Form W-3A) a well with the appropriate Commission district office and the division in Austin at least five days prior to the beginning of plugging operations;

(4) a plugging report for monitoring wells that penetrate the base of usable quality water and all injection wells. The applicant's plan must ensure that within 30 days after plugging the operator will file a complete well plugging record (Form W-3) in duplicate with the appropriate district office. The operator and the person who performed the plugging operation (if other than the operator) must certify the report as accurate;

(5) a plan for plugging all monitoring wells that do not penetrate the base of usable quality water in accordance with 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers); and

(6) a plan for certifying that all monitoring wells that do not penetrate the base of usable quality water will be plugged in accordance with 16 TAC Chapter 76.

(l) Emergency and remedial response plan. The applicant must submit an emergency and remedial response plan that:

(1) accounts for the entire AOR [area of review], regardless of whether or not corrective action in the AOR [area of review] is phased;

(2) describes actions to be taken to address escape from the permitted injection interval or movement of the injection fluids or formation fluids that may cause an endangerment to USDWs [underground sources of drinking water] during construction, operation, closure, and post-closure periods;

(3) includes a safety plan that includes emergency response procedures, provisions to provide security against unauthorized activity, and CO₂ release detection and prevention measures; and

(4) includes a description of the training and testing that will be provided to each employee at the storage facility on operational safety and emergency response procedures to the extent applicable to the employee's duties and responsibilities. The operator must train all employees before commencing injection and storage operations at the facility. The operator must train each subsequently hired employee before that employee commences work at the storage facility. The operator must hold a safety meeting with each contractor prior to the commencement of any new contract work at a storage facility. Emergency measures specific to the contractor's work must be explained in the contractor safety meeting. Training schedules, training dates, and course outlines must be provided to Commission personnel upon request for the purpose of Commission review to determine compliance with this paragraph.

(m) Post-injection storage facility care and closure plan. The applicant must submit a post-injection storage facility care and closure plan. The plan must include:

(1) a demonstration containing substantial evidence that the geologic storage project will no longer pose a risk of endangerment to USDWs at the end of the post-injection storage facility care timeframe. The demonstration must be based on significant, site-specific data and information, including all data and information collected pursuant subsections (b)-(d) of this section and §5.206(b)(5) of this title;

(2) [(4)] the pressure differential between pre-injection and predicted post-injection pressures in the injection zone;

(3) [(2)] the predicted position of the CO₂ plume and associated pressure front at closure as demonstrated in the AOR [area of review] evaluation required under subsection (d) of this section;

(4) [(3)] a description of the proposed post-injection monitoring location, methods, and frequency;

(5) [(4)] a proposed schedule for submitting post-injection storage facility care monitoring results to the division; [and]

(6) [(5)] the estimated cost of proposed post-injection storage facility care and closure; and [-]

(7) consideration and documentation of:

(A) the results of computational modeling performed pursuant to delineation of the AOR under subsection (d) of this section;

(B) the predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any USDWs, and/or the timeframe for pressure decline to pre-injection pressures;

(C) the predicted rate of CO₂ plume migration within the injection zone, and the predicted timeframe for the cessation of migration;

(D) a description of the site-specific processes that will result in CO₂ trapping including immobilization by capillary trapping, dissolution, and mineralization at the site;

(E) the predicted rate of CO₂ trapping in the immobile capillary phase, dissolved phase, and/or mineral phase;

(F) the results of laboratory analyses, research studies, and/or field or site-specific studies to verify the information required in subparagraphs (D) and (E) of this paragraph;

(G) a characterization of the confining zone(s) including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid (e.g., CO₂, formation fluids) movement;

(H) the presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic storage project or any other projects in proximity to the predicted/modeled, final extent of the CO₂ plume and area of elevated pressure;

(I) a description of the well construction and an assessment of the quality of plugs of all abandoned wells within the AOR;

(J) the distance between the injection zone and the nearest USDWs above and/or below the injection zone; and

(K) any additional site-specific factors required by the Director; and

(8) information submitted to support the demonstration in paragraph (1) of this subsection, which shall meet the following criteria:

(A) all analyses and tests performed to support the demonstration must be accurate, reproducible, and performed in accordance with the established quality assurance standards;

(B) estimation techniques must be appropriate and EPA-certified test protocols must be used where available;

(C) predictive models must be appropriate and tailored to the site conditions, composition of the CO₂ stream, and injection and site conditions over the life of the geologic storage project;

(D) predictive models must be calibrated using existing information where sufficient data are available;

(E) reasonably conservative values and modeling assumptions must be used and disclosed to the Director whenever values are estimated on the basis of known, historical information instead of site-specific measurements;

(F) an analysis must be performed to identify and assess aspects of the alternative PISC timeframe demonstration that contribute significantly to uncertainty. The operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration;

(G) an approved quality assurance and quality control plan must address all aspects of the demonstration; and

(H) any additional criteria required by the Director.

(n) Fees, financial responsibility, and financial assurance. The applicant must pay the fees, demonstrate that it has met the financial responsibility requirements, and provide the Commission with financial assurance as required under §5.205 of this title (relating to Fees, Financial Responsibility, and Financial Assurance).

(1) The applicant must demonstrate financial responsibility and resources for corrective action, injection well plugging, post-injection storage facility care and storage facility closure, and emergency and remedial response until the director has provided to the operator a written verification that the director has determined that the facility has reached the end of the post-injection storage facility care period.

(2) In determining whether the applicant is financially responsible, the director must rely on the following:

(A) the person's most recent audited annual report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)). The date of the audit may not be more than one year before the date of submission of the application to the division; and

(B) the person's most recent quarterly report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); or

(C) if the person is not required to file such a report, the person's most recent audited financial statement. The date of the audit must not be more than one year before the date of submission of the application to the division.

(o) Letter from the Groundwater Advisory Unit of the Oil and Gas Division. The applicant must submit a letter from the Groundwater Advisory Unit of the Oil and Gas Division in accordance with Texas Water Code, §27.046.

(p) Other information. The applicant must submit any other information requested by the director as necessary to discharge the Commission's duties under Texas Water Code, Chapter 27, Subchapter B-1, or deemed necessary by the director to clarify, explain, and support the required attachments.

§5.204. Notice of Permit Actions and Public Comment Period [and Hearing].

[(a) Placement of copy of application for public inspection. The applicant must make a complete copy of the permit application available for the public to inspect and copy by filing a copy of the application with the County Clerk at the courthouse of each county where the storage facility is to be located, or if approved by the director, at another equivalent public office. The applicant also must provide an

electronic copy of the complete application to enable the Commission to place the copy on the Railroad Commission Internet website. The applicant must file any subsequent revision of the application with the County Clerk or other approved public office and must file at the Commission an electronic copy of the updated application at the same time the applicant files the revision at the Commission.]

(a) [(b)] Notice requirements.

(1) The Commission shall give notice of the following actions:

(A) a draft permit has been prepared under §5.202(e) of this title (relating to Permit Required, and Draft Permit and Fact Sheet); and

(B) a hearing that has been scheduled under subsection (b)(2) of this section.

(2) [(4)] General notice by publication. The Commission shall [To give general notice to local governments and interested or affected persons, the applicant must] publish notice of a draft permit [the application for an original or amended storage facility permit no later than the date the application is mailed to or filed with the director. The applicant must use the appropriate form of notice, include the information as set forth in subparagraph (A) or (B) of this paragraph, and cause the notice to be published] once a week for three consecutive weeks in a [each] newspaper of general circulation in each county where the storage facility is located or is to be located. [The applicant must file proof of publication of the notice with the application.]

[(A) Form for notice by publication of an application for an anthropogenic CO₂ geologic storage facility permit.] [Figure: 16 TAC §5.204(b)(1)(A)]

[(B) Form for notice by publication of an application for amendment of an existing CO₂ geologic storage facility permit.] [Figure: 16 TAC §5.204(b)(1)(B)]

[(C) The applicant must submit proof of publication of notice in the following form:] [Figure: 16 TAC §5.204(b)(1)(C)]

(3) [(2)] Methods of notification. The Commission shall give notice by the following methods: [Individual notice.]

(A) Individual notice. Notice of a draft permit or a public hearing shall be given by mailing a copy of the notice to the following persons:

(i) the applicant;

(ii) the United State Environmental Protection

Agency;

(iii) the Texas Commission on Environmental Quality, the Texas Water Development Board, the Texas Department of State Health Services, the Texas Parks and Wildlife Department, the Texas General Land Office, the Texas Historical Commission, the United States Fish and Wildlife Service, other Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, and coastal zone management plans, the Advisory Council on Historic Preservation, including any affected States (Indian Tribes) and any agency that the Commission knows has issued or is required to issue a permit for the same facility under any federal or state environmental program;

[(A)] [Persons to notify. By no later than the date the application is mailed to or filed with the director, the applicant must give notice of an application for a permit to operate a CO₂ storage facility, or to amend an existing storage facility permit to:]

(iv) [(i)] each adjoining mineral interest owner, other than the applicant, of the outermost [outmost] boundary of the proposed geologic storage facility;

(v) [(ii)] each leaseholder of minerals lying above or below the proposed storage reservoir;

(vi) [(iii)] each adjoining leaseholder of minerals offsetting the outermost boundary of the proposed geologic storage facility;

(vii) [(iv)] each owner or leaseholder of any portion of the surface overlying the proposed storage reservoir and the adjoining area of the outermost boundary of the proposed geologic storage facility;

(viii) [(v)] the clerk of the county or counties where the proposed storage facility is located;

(ix) [(vi)] the city clerk or other appropriate city official where the proposed storage facility is located within city limits; [and]

(x) any other unit of local government having jurisdiction over the area where the facility is or is proposed to be located, and each state agency having any authority under state law with respect to the construction or operation of the facility;

(xi) persons on the mailing list developed by the Commission, including those who request in writing to be on the list and by soliciting participants in public hearings in that area for their interest in being included on area mailing lists; and

(xii) [(vii)] any other class of persons that the director determines should receive notice of the application.

(B) Any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice of a draft permit under this subsection.

(4) [(B)] Content of notice. Individual notice must consist of:

(A) [(i)] the applicant's intention to construct and operate an anthropogenic CO₂ geologic storage facility;

(B) [(ii)] a description of the geologic storage facility location;

(C) a copy of any draft permit and fact sheet;

(D) [(iii)] each physical location and the internet address at which a copy of the application may be inspected; [and]

(E) [(iv)] a statement that:

(i) [(i)] affected persons may protest the application;

(ii) [(ii)] protests must be filed in writing and must be mailed or delivered to Technical Permitting, Oil and Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711; and

(iii) [(iii)] protests must be received by the director within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice, whichever is later; and [-]

(F) information satisfying the requirements of 40 CFR §124.10(d)(1).

(5) [(3)] Individual notice by publication. The applicant must make diligent efforts to ascertain the name and address of each person identified under paragraph (3)(A) [(2)(A)] of this subsection.

The exercise of diligent efforts to ascertain the names and addresses of such persons requires an examination of county records where the facility is located and an investigation of any other information that is publicly and/or reasonably available to the applicant. If, after diligent efforts, an applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (3)(A) [(2)(A)] of this subsection, the applicant satisfies the notice requirements for those persons by the publication of the notice of application as required in paragraph (2) [(4)] of this subsection. The applicant must submit an affidavit to the director specifying the efforts that the applicant took to identify each person whose name and/or address could not be ascertained.

(6) Notice to certain communities. The applicant shall identify whether any portions of the AOR encompass an Environmental Justice (EJ) or Limited English Proficiency (LEP) area using U.S. Census Bureau 2018 American Community Survey data. If the AOR includes an EJ or LEP area, the applicant shall conduct enhanced public outreach activities to these communities. Efforts to include EJ and LEP communities in public involvement activities in such cases shall include:

(A) published meeting notice in English and the identified language (e.g., Spanish);

(B) comment forms posted on the applicant's webpage and available at public meeting in English and the alternate language;

(C) interpretation services accommodated upon request;

(D) English translation of any comments made during any comment period in the alternate language; and

(E) to the extent possible, public meeting venues near public transportation.

(7) Comment period for a draft permit. Public notice of a draft permit, including a notice of intent to deny a permit application, shall allow at least 30 days for public comment.

(b) [(e)] Public comment and hearing [Hearing] requirements.

(1) Public comment.

(A) During the public comment period, any interested person may submit written comments on the draft permit and may request a hearing if one has not already been scheduled.

(B) Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(C) The public comment period shall automatically be extended to the close of any public hearing under this section. The hearing examiner may also extend the comment period by so stating at the hearing.

(2) Public hearing.

(A) [(4)] If the Commission receives a protest regarding an application for a new permit or for an amendment of an existing permit for a geologic storage facility from a person notified pursuant to subsection (a) [(b)] of this section or from any other affected person within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice, whichever is later, then the director will notify the applicant that the director cannot administratively approve the application. Upon the written request of the applicant, the director will schedule a hearing on the application. [The Commission must give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an

interest in the application. After the hearing, the examiner will recommend a final action by the Commission.]

(B) The director shall hold a public hearing whenever the director finds, on the basis of requests, a significant degree of public interest in a draft permit.

(C) The director may also hold a public hearing at the director's discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(D) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of a hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(E) Upon the written request of the applicant, the Commission must give notice of a hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After the hearing, the examiner will recommend a final action by the Commission. Notices shall include information satisfying the requirements of 40 CFR §124.10(d)(2) and the Texas Government Code, §2001.052.

(3) [(2)] If the Commission receives no protest regarding an application for a new permit or for the amendment of an existing permit for a geologic storage facility from a person notified pursuant to subsection (a) [(b)] of this section or from any other affected person, the director may administratively approve the application.

(4) [(3)] If the director administratively denies an application for a new permit or for the amendment of an existing permit for a geologic storage facility, upon the written request of the applicant, the director will schedule a hearing. After hearing, the examiner will recommend a final action by the Commission.

§5.205. *Fees, Financial Responsibility, and Financial Assurance.*

(a) Fees. In addition to the fee for each injection well required by §3.78 of this title (relating to Fees and Financial Security Requirements), the following non-refundable fees must be remitted to the Commission with the application:

(1) Base application fee.

(A) The applicant must pay to the Commission an application fee of \$50,000 for each permit application for a geologic storage facility.

(B) The applicant must pay to the Commission an application fee of \$25,000 for each application to amend a permit for a geologic storage facility.

(2) Injection fee. The operator must pay to the Commission an annual fee of \$0.025 per metric ton of CO₂ injected into the geologic storage facility.

(3) Post-injection care fee. The operator must pay to the Commission an annual fee of \$50,000 each year the operator does not inject into the geologic storage facility until the director has authorized storage facility closure.

[(4) The anthropogenic CO₂ storage trust fund shall be capped at \$5,000,000.]

(b) Financial responsibility.

(1) A person to whom a permit is issued under this subchapter must provide annually to the director evidence of financial responsibility that is satisfactory to the director. The operator must demonstrate and maintain financial responsibility and resources for corrective action, injection well plugging, post-injection storage facility care and storage facility closure, and emergency and remedial re-

sponse until the director has provided written verification that the director has determined that the facility has reached the end of the post-injection storage facility care period.

(2) In determining whether the person is financially responsible, the director must rely on:

(A) the person's most recent audited annual report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); and

(B) the person's most recent quarterly report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); or

(C) if the person is not required to file such a report, the person's most recent audited financial statement. The date of the audit must not be more than one year before the date of submission of the application to the director.

(3) The applicant's demonstration of financial responsibility must account for the entire AOR [area of review], regardless of whether corrective action in the AOR [area of review] is phased.

(c) Financial assurance.

(1) Injection and monitoring wells. The operator must comply with the requirements of §3.78 of this title for all monitoring wells that penetrate the base of usable quality water and all injection wells.

(2) Geologic storage facility.

(A) The applicant must include in an application for a geologic storage facility permit:

(i) a written estimate of the highest likely dollar amount necessary to perform post-injection monitoring and closure of the facility that shows all assumptions and calculations used to develop the estimate;

(ii) a copy of the form of the bond or letter of credit that will be filed with the Commission; and

(iii) information concerning the issuer of the bond or letter of credit including the issuer's name and address and evidence of authority to issue bonds or letters of credit in Texas.

(B) A geologic storage facility shall [may] not receive CO₂ until a bond or letter of credit in an amount approved by the director under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with and approved by the director.

(C) The determination of the amount of financial assurance for a geologic storage facility is subject to the following requirements:

(i) The director must approve the dollar amount of the financial assurance. The amount of financial assurance required to be filed under this subsection must be equal to or greater than the maximum amount necessary to perform corrective action, emergency response, and remedial action, post-injection monitoring and site care, and closure of the geologic storage facility, exclusive of plugging costs for any well or wells at the facility, at any time during the permit term in accordance with all applicable state laws, Commission rules and orders, and the permit;

(ii) A qualified professional engineer licensed by the State of Texas, as required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice [Practiçees] Act, must prepare

or supervise the preparation of a written estimate of the highest likely amount necessary to close the geologic storage facility. The operator must submit to the director the written estimate under seal of a qualified licensed professional engineer, as required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice [Practiices] Act; and

(iii) The Commission may use the proceeds of financial assurance filed under this subsection to pay the costs of plugging any well or wells at the facility if the financial assurance for plugging costs filed with the Commission is insufficient to pay for the plugging of such well or wells.

(D) Bonds and letters of credit filed in satisfaction of the financial assurance requirements for a geologic storage facility must comply with the following standards as to issuer and form.

(i) The issuer of any geologic storage facility bond filed in satisfaction of the requirements of this subsection must be a corporate surety authorized to do business in Texas. The form of bond filed under this subsection must provide that the bond be renewed and continued in effect until the conditions of the bond have been met or its release is authorized by the director.

(ii) Any letter of credit filed in satisfaction of the requirements of this subsection must be issued by and drawn on a bank authorized under state or federal law to operate in Texas. The letter of credit must be an irrevocable, standby letter of credit subject to the requirements of Texas Business and Commerce Code, §§5.101 - 5.118. The letter of credit must provide that it will be renewed and continued in effect until the conditions of the letter of credit have been met or its release is authorized by the director.

(E) The operator of a geologic storage facility must provide to the director annual written updates of the cost estimate to increase or decrease the cost estimate to account for any changes to the AOR [area of review] and corrective action plan, the emergency response and remedial action plan, the injection well plugging plan, and the post-injection storage facility care and closure plan. The operator must provide to the director upon request an adjustment of the cost estimate if the director has reason to believe that the original demonstration is no longer adequate to cover the cost of injection well plugging and post-injection storage facility care and closure.

(3) The director may consider allowing the phasing in of financial assurance for only corrective action based on project-specific factors.

(4) The director may approve a reduction in the amount of financial assurance required for post-injection monitoring and/or corrective action based on project-specific monitoring results.

(d) Notice of adverse financial conditions.

(1) The operator must notify the Commission of adverse financial conditions that may affect the operator's ability to carry out injection well plugging and post-injection storage facility care and closure. An operator must file any notice of bankruptcy in accordance with §3.1(f) of this title (relating to Organization Report; Retention of Records; Notice Requirements). The operator must give such notice by certified mail.

(2) The operator filing a bond must ensure that the bond provides a mechanism for the bond or surety company to give prompt notice to the Commission and the operator of any action filed alleging insolvency or bankruptcy of the surety company or the bank or alleging any violation that would result in suspension or revocation of the surety or bank's charter or license to do business.

(3) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency or suspension, or revocation of its charter or license, the Commission must deem the operator to be without bond coverage. The Commission must issue a notice to any operator who is without bond coverage and must specify a reasonable period to replace bond coverage, not to exceed 90 days.

§5.206. *Permit Standards.*

(a) Each condition applicable to a permit shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to the rules in this chapter shall be given in the permit. The requirements listed in this section are directly enforceable regardless of whether the requirement is a condition of the permit.

(b) [(a)] General criteria. The director may issue a permit under this subchapter if the applicant demonstrates and the director finds that:

(1) the injection and geologic storage of anthropogenic CO₂ will not endanger or injure any existing or prospective oil, gas, geothermal, or other mineral resource, or cause waste as defined by Texas Natural Resources Code, §85.046(11);

(2) with proper safeguards, both USDWs [~~underground sources of drinking water~~] and surface water can be adequately protected from CO₂ migration or displaced formation fluids;

(3) the injection of anthropogenic CO₂ will not endanger or injure human health and safety;

(4) the reservoir into which the anthropogenic CO₂ is injected is suitable for or capable of being made suitable for protecting against the escape or migration of anthropogenic CO₂ from the storage reservoir;

(5) the geologic storage facility will be sited in an area with suitable geology, which at a minimum must include:

(A) an injection zone of sufficient areal extent, thickness, porosity, and permeability to receive the total anticipated volume of the CO₂ stream; and

(B) a confining zone [~~zone(s)~~] that is laterally continuous and free of known transecting transmissive faults or fractures over an area sufficient to contain the injected CO₂ stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without compromising the confining zone or causing the movement of fluids that endangers USDWs [~~underground sources of drinking water~~];

(6) the applicant for the permit meets all of the other statutory and regulatory requirements for the issuance of the permit;

(7) the applicant has provided a letter from the Groundwater Advisory Unit of the Oil and Gas Division in accordance with §5.203(o) of this title (relating to Application Requirements);

(8) the applicant has provided a letter of determination from TCEQ concluding that drilling and operating an anthropogenic CO₂ injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ;

(9) [(8)] the applicant has provided a signed statement that the applicant has a good faith claim to the necessary and sufficient property rights for construction and operation of the geologic storage facility for at least the first five years after initiation of injection in accordance with §5.203(d)(1)(A) of this title;

(10) [(9)] the applicant has paid the fees required in §5.205(a) of this title (relating to Fees, Financial Responsibility, and Financial Assurance);

(11) [(10)] the director has determined that the applicant has sufficiently demonstrated financial responsibility as required in §5.205(b) of this title; and

(12) [(11)] the applicant submitted to the director financial assurance in accordance with §5.205(c) of this title.

(c) [(b)] Injection well construction.

(1) Construction of anthropogenic CO₂ injection wells must meet the criteria in §5.203(e) of this title.

(2) Within 30 days after the completion or conversion of an injection well subject to this subchapter, the operator must file with the division a complete record of the well on the appropriate form showing the current completion.

(3) Except in the case of an emergency repair, the operator of a geologic storage facility must notify the director in writing at least 30 days [48 hours, and obtain the director's approval,] prior to conducting any well workover that involves running tubing and setting packers [packer(s)], beginning any workover or remedial operation, or conducting any required pressure tests or surveys. In the case of an emergency repair, the operator must notify the director of such emergency repair as soon as reasonably practical. No such work may commence until approved by the director.

(d) [(c)] Operating a geologic storage facility.

(1) Operating plan. The operator must maintain and comply with the approved operating plan.

(2) Operating criteria.

(A) Injection between the outermost casing protecting USDWs [underground sources of drinking water] and the well bore is prohibited.

(B) The total volume of CO₂ injected into the storage facility must be metered through a master meter or a series of master meters. The volume of CO₂ injected into each injection well must be metered through an individual well meter.

(C) The operator must comply with a maximum surface injection pressure limit approved by the director and specified in the permit. In approving a maximum surface injection pressure limit, the director must consider the results of well tests and, where appropriate, geomechanical or other studies that assess the risks of tensile failure and shear failure. The director must approve limits that, with a reasonable degree of certainty, will avoid initiation or propagation of fractures in the confining zone or cause otherwise non-transmissive faults or fractures transecting the confining zone to become transmissive. In no case may injection pressure cause movement of injection fluids or formation fluids in a manner that endangers USDWs [underground sources of drinking water]. The Commission shall include in any permit it might issue a limit of 90 percent of the fracture pressure to ensure that the injection pressure does not initiate new fractures or propagate existing fractures in the injection zone(s). In no case may injection pressure initiate fractures in the confining zone(s) or cause the movement of injection or formation fluids that endangers a USDW. The director may approve a plan for controlled artificial fracturing of the injection zone.

(D) The operator must fill the annulus between the tubing and the long string casing with a corrosion inhibiting fluid approved by the director. The owner or operator must maintain on the annulus

a pressure that exceeds the operating injection pressure, unless the director determines that such requirement might harm the integrity of the well or endanger USDWs.

(E) The operator must install and use continuous recording devices to monitor the injection pressure, and the rate, volume, and temperature of the CO₂ stream. The operator must monitor the pressure on the annulus between the tubing and the long string casing. The operator must continuously record, continuously monitor, or control by a preset high-low pressure sensor switch the wellhead pressure of each injection well.

(F) The operator must comply with the following requirements for alarms and automatic shut-off systems.

(i) The operator must install and use alarms and automatic shut-off systems designed to alert the operator and shut-in the well when operating parameters such as annulus pressure, injection rate or other parameters diverge from permitted ranges and/or gradients. On offshore wells, the automatic shut-off systems must be installed down-hole.

(ii) If an automatic shutdown is triggered or a loss of mechanical integrity is discovered, the operator must immediately investigate and identify as expeditiously as possible the cause. If, upon investigation, the well appears to be lacking mechanical integrity, or if monitoring otherwise indicates that the well may be lacking mechanical integrity, the operator must:

(I) immediately cease injection;

(II) take all steps reasonably necessary to determine whether there may have been a release of the injected CO₂ stream into any unauthorized zone;

(III) notify the director as soon as practicable, but within 24 hours;

(IV) restore and demonstrate mechanical integrity to the satisfaction of the director prior to resuming injection; and

(V) notify the director when injection can be expected to resume.

(e) [(d)] Monitoring, sampling, and testing requirements.

(1) The operator of an anthropogenic CO₂ injection well must maintain and comply with the approved monitoring, sampling, and testing plan to verify that the geologic storage facility is operating as permitted and that the injected fluids are confined to the injection zone.

(2) All permits shall include the following requirements:

(A) the proper use, maintenance, and installation of monitoring equipment or methods;

(B) monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including, when required, continuous monitoring;

(C) reporting no less frequently than as specified in §5.207 of this title (relating to Reporting and Record-Keeping).

(3) The director may require additional monitoring as necessary to support, upgrade, and improve computational modeling of the AOR [area of review] evaluation and to determine compliance with the requirement that the injection activity not allow movement of fluid that would endanger USDWs [underground sources of drinking water].

(f) [(e)] Mechanical integrity.

(1) The operator must maintain and comply with the approved mechanical integrity testing plan submitted in accordance with §5.203(j) of this title.

(2) Other than during periods of well workover in which the sealed tubing-casing annulus is of necessity disassembled for maintenance or corrective procedures, the operator must maintain mechanical integrity of the injection well at all times.

(3) The operator must either repair and successfully retest or plug a well that fails a mechanical integrity test.

(4) The director may require additional or alternative tests if the results presented by the operator do not demonstrate to the director that there is no significant leak in the casing, tubing, or packer or movement of fluid into or between formations containing USDWs [underground sources of drinking water] resulting from the injection activity.

(g) [(f)] Area of review and corrective action. Notwithstanding the requirement in §5.203(d)(2)(B)(i) of this title to perform a re-evaluation of the AOR [area of review], at the frequency specified in the AOR [area of review] and corrective action plan or permit, the operator of a geologic storage facility also must conduct the following whenever warranted by a material change in the monitoring and/or operational data or in the evaluation of the monitoring and operational data by the operator:

(1) a re-evaluation of the AOR [area of review] by performing all of the actions specified in §5.203(d)(1)(A) - (C) of this title to delineate the AOR [area of review] and identify all wells that require corrective action;

(2) identify all wells in the re-evaluated AOR [area of review] that require corrective action;

(3) perform corrective action on wells requiring corrective action in the re-evaluated AOR [area of review] in the same manner specified in §5.203(d)(1)(C) of this title; and

(4) submit an amended AOR [area of review] and corrective action plan or demonstrate to the director through monitoring data and modeling results that no change to the AOR [area of review] and corrective action plan is needed.

(h) [(g)] Emergency, mitigation, and remedial response.

(1) Plan. The operator must maintain and comply with the approved emergency and remedial response plan required by §5.203(l) of this title. The operator must update the plan in accordance with §5.207(a)(2)(D)(vi) of this title (relating to Reporting and Record-Keeping). The operator must make copies of the plan available at the storage facility and at the company headquarters.

(2) Training.

(A) The operator must prepare and implement a plan to train and test each employee at the storage facility on occupational safety and emergency response procedures to the extent applicable to the employee's duties and responsibilities. The operator must make copies of the plan available at the geological storage facility. The operator must train all employees before commencing injection and storage operations at the facility. The operator must train each subsequently hired employee before that employee commences work at the storage facility.

(B) The operator must hold a safety meeting with each contractor prior to the commencement of any new contract work at a storage facility. The operator must explain emergency measures specific to the contractor's work in the contractor safety meeting.

(C) The operator must provide training schedules, training dates, and course outlines to Commission personnel upon request for the purpose of Commission review to determine compliance with this paragraph.

(3) Action. If an operator obtains evidence that the injected CO₂ stream and associated pressure front may cause an endangerment to USDWs [underground sources of drinking water], the operator must:

(A) immediately cease injection;

(B) take all steps reasonably necessary to identify and characterize any release;

(C) notify the director as soon as practicable but within at least 24 hours; and

(D) implement the approved emergency and remedial response plan.

(4) Resumption of injection. The director may allow the operator to resume injection prior to remediation if the operator demonstrates that the injection operation will not endanger USDWs [underground sources of drinking water].

(i) [(h)] Commission witnessing of testing and logging. The operator must provide the division with the opportunity to witness all planned well workovers, stimulation activities, other than stimulation for formation testing, and testing and logging. The operator must submit a proposed schedule of such activities to the Commission at least 30 days prior to conducting the first such activity [test] and submit notice at least 48 hours in advance of any actual activity. Such activities shall [testing or logging. Testing and logging may] not commence before the end of the 30 days [48-hour period] unless authorized by the director.

(j) [(i)] Well plugging. The operator of a geologic storage facility must maintain and comply with the approved well plugging plan required by §5.203(k) of this title.

(k) [(j)] Post-injection storage facility care and closure.

(1) Post-injection storage facility care and closure plan.

(A) The operator of an injection well must maintain and comply with the approved post-injection storage facility care and closure plan.

(B) The operator must update the plan in accordance with §5.207(a)(2)(D)(vi) of this title. At any time during the life of the geologic sequestration project, the operator may modify and resubmit the post-injection site care and site closure plan for the director's approval within 30 days of such change. Any amendments to the post-injection site care and site closure plan must be approved by the director, be incorporated into the permit, and are subject to the permit modification requirements in §5.202 of this title (relating to Permit Required), as appropriate.

(C) Upon cessation of injection, the operator of a geologic storage facility must either submit an amended plan or demonstrate to the director through monitoring data and modeling results that no amendment to the plan is needed.

(2) Post-injection storage facility monitoring. Following cessation of injection, the operator must continue to conduct monitoring as specified in the approved plan until the director determines that the position of the CO₂ plume and pressure front are such that the geologic storage facility will not endanger USDWs [underground sources of drinking water].

(3) Prior to closure. Prior to authorization for storage facility closure, the operator must demonstrate to the director, based

on monitoring, other site-specific data, and modeling that is reasonably consistent with site performance that no additional monitoring is needed to assure that the geologic storage facility will not endanger USDWs [underground sources of drinking water]. The operator must demonstrate, based on the current understanding of the site, including monitoring data and/or modeling, all of the following:

(A) the estimated magnitude and extent of the facility footprint (the CO₂ plume and the area of elevated pressure);

(B) that there is no leakage of either CO₂ or displaced formation fluids that will endanger USDWs [underground sources of drinking water];

(C) that the injected or displaced fluids are not expected to migrate in the future in a manner that encounters a potential leakage pathway into USDWs [underground sources of drinking water];

(D) that the injection wells at the site completed into or through the injection zone or confining zone will be plugged and abandoned in accordance with these requirements; and

(E) any remaining facility monitoring wells will be properly plugged or are being managed by a person and in a manner approved by the director.

(4) Notice of intent for storage facility closure. The operator must notify the director in writing at least 120 days before storage facility closure. At the time of such notice, if the operator has made any changes to the original plan, the operator also must provide the revised plan. The director may approve a shorter notice period.

(5) Authorization for storage facility closure. No operator may initiate storage facility closure until the director has approved closure of the storage facility in writing. After the director has authorized storage facility closure, the operator must plug all wells in accordance with the approved plan required by §5.203(k) of this title.

(6) Storage facility closure report. Once the director has authorized storage facility closure, the operator must submit a storage facility closure report within 90 days that must thereafter be retained by the Commission in Austin. The report must include the following information:

(A) documentation of appropriate injection and monitoring well plugging. The operator must provide a copy of a survey plat that has been submitted to the Regional Administrator of Region 6 of the United States Environmental Protection Agency. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks;

(B) documentation of appropriate notification and information to such state and local authorities as have authority over drilling activities to enable such state and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zones; and

(C) records reflecting the nature, composition and volume of the CO₂ stream.

(7) Certificate of closure. Upon completion of the requirements in paragraphs (3) - (6) of this subsection, the director will issue a certificate of closure. At that time, the operator is released from the requirement in §5.205(c) of this title to maintain financial assurance.

(l) [(k)] Deed notation. The operator of a geologic storage facility must record a notation on the deed to the facility property; on any other document that is normally examined during title search; or on any other document that is acceptable to the county clerk for filing in the official public records of the county that will in perpetuity provide any potential purchaser of the property the following information:

(1) a complete legal description of the affected property;

(2) that land has been used to geologically store CO₂;

(3) that the survey plat has been filed with the Commission;

(4) the address of the office of the United States Environmental Protection Agency, Region 6, to which the operator sent a copy of the survey plat; and

(5) the volume of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred.

(m) [(h)] Retention of records. The operator must retain for 10 [five] years following storage facility closure records collected during the post-injection storage facility care period. The operator must deliver the records to the director at the conclusion of the retention period, and the records must thereafter be retained at the Austin headquarters of the Commission.

(n) [(m)] Signs. The operator must identify each location at which geologic storage activities take place, including each injection well, by a sign that meets the requirements specified in §3.3(1), (2), and (5) of this title (relating to Identification of Properties, Wells, and Tanks). In addition, each sign must include a telephone number where the operator or a representative of the operator can be reached 24 hours a day, seven days a week in the event of an emergency.

(o) [(n)] Other permit terms and conditions.

(1) Protection of USDWs. In any permit for a geologic storage facility, the director must impose terms and conditions reasonably necessary to protect USDWs [underground sources of drinking water]. Permits issued under this subchapter continue in effect until revoked, modified, or terminated [suspended] by the Commission. The operator must comply with each requirement set forth in this subchapter as a condition of the permit unless modified by the terms of the permit.

(2) Other conditions. The following conditions shall also be included in any permit issued under this subchapter.

(A) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. However, the permittee need not comply with the provisions of the permit to the extent and for the duration such noncompliance is authorized in an emergency permit under 40 CFR §144.34.

(B) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(C) Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(D) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(E) Property rights not conveyed. The issuance of a permit does not convey property rights of any sort, or any exclusive privilege.

(F) Activities not authorized. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

(G) Coordination with exploration. The permittee of a geologic storage well shall coordinate with any operator planning to drill through the AOR to explore for oil and gas or geothermal resources.

(H) Duty to provide information. The operator shall furnish to the Commission, within a time specified by the Commission, any information that the Commission may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The operator shall also furnish to the Commission, upon request, copies of records required to be kept under the conditions of the permit.

(I) Inspection and entry. The operator shall allow any member or employee of the Commission, on proper identification, to:

(i) enter upon the premises where a regulated activity is conducted or where records are kept under the conditions of the permit;

(ii) have access to and copy, during reasonable working hours, any records required to be kept under the conditions of the permit;

(iii) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor any substance or parameter for the purpose of assuring compliance with the permit or as otherwise authorized by the Texas Water Code, §27.071, or the Texas Natural Resources Code, §91.1012.

(J) Schedule of compliance: The permit may, when appropriate, specify a schedule of compliance leading to compliance with all provisions of this subchapter and Chapter 3 of this title.

(i) Any schedule of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(ii) If the schedule of compliance is for a duration of more than one year from the date of permit issuance, then interim requirements and completion dates (not to exceed one year) must be incorporated into the compliance schedule and permit.

(iii) Progress reports must be submitted no later than 30 days following each interim date and the final date of compliance.

§5.207. Reporting and Record-Keeping.

(a) The operator of a geologic storage facility must provide, at a minimum, the following reports to the director and retain the following information.

(1) Test records. The operator must file a complete record of all tests in duplicate with the district office within 30 days after the testing. In conducting and evaluating the tests enumerated in this subchapter or others to be allowed by the director, the operator and the director must apply methods and standards generally accepted in the industry. When the operator reports the results of mechanical integrity tests to the director, the operator must include a description of any tests and methods [the test(s) and the method(s)] used. In making this evalu-

ation, the director must review monitoring and other test data submitted since the previous evaluation.

(2) Operating reports. The operator also must include summary cumulative tables of the information required by the reports listed in this paragraph.

(A) Report within 24 hours. The operator must report to the appropriate district office the discovery of any significant pressure changes or other monitoring data that indicate the presence of leaks in the well or the lack of confinement of the injected gases to the geologic storage reservoir. Such report must be made orally as soon as practicable, but within 24 hours, following the discovery of the leak, and must be confirmed in writing within five working days.

(B) Report within 30 days. The operator must report:

(i) the results of periodic tests for mechanical integrity;

(ii) the results of any other test of the injection well conducted by the operator if required by the director; and

(iii) a description of any well workover.

(C) Semi-annual report. The operator must report:

(i) a summary of well head pressure monitoring;

(ii) changes to the physical, chemical, and other relevant characteristics of the CO₂ stream from the proposed operating data;

(iii) monthly average, maximum and minimum values for injection pressure, flow rate and volume and/or mass, and annular pressure;

(iv) monthly annulus fluid volume added;

(v) [(+)] a description of any event that significantly exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

(vi) [(+)] a description of any event that triggers a shutdown device and the response taken; and

(vii) [(+)] the results of monitoring prescribed under §5.206(e) [~~§5.206(d)~~] of this title (relating to Permit Standards).

(D) Annual reports. The operator must submit an annual report detailing:

(i) corrective action performed;

(ii) new wells installed and the type, location, number, and information required in §5.203(e) of this title (relating to Application Requirements);

(iii) re-calculated AOR [area of review] unless the operator submits a statement signed by an appropriate company official confirming that monitoring and operational data supports the current delineation of the AOR [area of review] on file with the Commission;

(iv) the updated area for which the operator has a good faith claim to the necessary and sufficient property rights to operate the geologic storage facility;

(v) tons of CO₂ injected; and

(vi) The operator must maintain and update required plans in accordance with the provisions of this subchapter.

(I) Operators must submit an annual statement, signed by an appropriate company official, confirming that the operator has:

(-a-) reviewed the monitoring and operational data that are relevant to a decision on whether to reevaluate the AOR [area of review] and the monitoring and operational data that are relevant to a decision on whether to update an approved plan required by §5.203 or §5.206 of this title; and

(-b-) determined whether any updates were warranted by material change in the monitoring and operational data or in the evaluation of the monitoring and operational data by the operator.

(II) Operators must submit either the updated plan or a summary of the modifications for each plan for which an update the operator determined to be warranted pursuant to subclause (I) of this clause. The director may require submission of copies of any updated plans and/or additional information regarding whether or not updates of any particular plans are warranted.

~~(III) The director may require the revision of any required plan whenever the director determines that such a revision is necessary to comply with the requirements of this title.]~~

(vii) other information as required by the permit.

(3) The director may require the revision of any required plan following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the director or whenever the director determines that such a revision is necessary to comply with the requirements of this subchapter.

(b) Report format.

(1) The operator must report the results of injection pressure and injection rate monitoring of each injection well on Form H-10, Annual Disposal/Injection Well Monitoring Report, and the results of internal mechanical integrity testing on Form H-5, Disposal/Injection Well Pressure Test Report. Operators must submit other reports in a format acceptable to the Commission. At the discretion of the director, other formats may be accepted.

(2) The operator must submit all required reports, submittals, and notifications under this subchapter to the director and to the Environmental Protection Agency in an electronic format approved by the director.

(c) Signatories to reports.

(1) Reports. All reports required by permits and other information requested by the director, shall be signed by a person described in §5.203(a)(1)(B) of this title, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(A) the authorization is made in writing by a person described in §5.203(a)(1)(B) of this title;

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; and

(C) the written authorization is submitted to the director.

(2) Changes to authorization. If an authorization under paragraph (1) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (1) of this subsection must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. All reports required by permits and other information requested by the director under this subchapter, shall be certified as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(e) [(e)] Record retention. The operator must retain all well-head pressure records, metering records, and integrity test results for at least 10 [five] years. The operator must retain all documentation of good faith claim to necessary and sufficient property rights to operate the geologic storage facility until the director issues the final certificate of closure in accordance with §5.206(k)(7) [~~§5.206(j)(7)~~] 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.

Filed with the Office of the Secretary of State on May 3, 2022.

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Railroad Commission of Texas

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For further information, please call: (512) 475-1295



CHAPTER 9. LP-GAS SAFETY RULES

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 16 TAC §9.52(g)(1) and §9.403(a) are not included in the print version of the Texas Register. The figures are available in the on-line version of the May 20, 2022, issue of the Texas Register.)

The Railroad Commission of Texas (Commission) proposes amendments to the following rules in Subchapter A, General Requirements: §9.2, Definitions; §9.6, License Categories, Container Manufacturer Registration, and Fees; §9.7, Applications for Licenses, Manufacturer Registrations, and Renewals; §9.8, Requirements and Application for a New Certificate; §9.10, Rules Examination; §9.16, Hearings for Denial, Suspension, or Revocation of Licenses, Manufacturer Registrations, or Certificates; §9.22, Changes in Ownership, Form of Dealership, or Name of Dealership; §9.26, Insurance and Self-Insurance Requirements; §9.51, General Requirements for LP-Gas Training and Continuing Education; §9.52, Training and Continuing Education; §9.54, Commission-Approved Outside Instructors; and proposes new §9.20, DOT Cylinder Filler Certificate Exemption; and §9.55, PERC Outside Instructor Training.

In Subchapter B, LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements, the Commission proposes amendments to §9.126, Appurtenances and Equipment; §9.130, Commission Identification Nameplates; §9.134, Connecting Container to Piping; §9.140, System Protection Requirements; §9.141, Uniform Safety Requirements; §9.142,

LP-Gas Container Storage and Installation Requirements; and §9.143, Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

In Subchapter C, Vehicles, the Commission proposes amendments to §9.202, Registration and Transfer of LP-Gas Transports or Container Delivery Units, and §9.211, Markings.

In Subchapter E, Adoption by Reference of NFPA 58 (LP-Gas Code), the Commission proposes amendments to §9.403, Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

The Commission proposes the amendments and new rules to incorporate provisions of Senate Bill 1582 (SB 1582) and Senate Bill 1668 (SB 1668), both enacted during the 87th Texas Legislative Session (Regular Session, 2021). Additional amendments are proposed as discussed in the following paragraphs.

Senate Bill 1668

Senate Bill 1668 added Natural Resources Code section 113.0955, which requires the Commission to waive its certification requirements for an individual who completes training consistent with the guidelines established by the Propane Education & Research Council (PERC) and complies with certain examination requirements. To incorporate this exemption, the Commission proposes amendments to the following rules: the definition of "certificate holder" in §9.2(5)(E) to include in the definition a person who holds a current DOT cylinder filler exemption; §9.8 to add new subsection (d) stating that an applicant for a new DOT cylinder filler certificate exemption shall comply with requirements of proposed new §9.20, which describes how an individual may apply for a DOT cylinder filler certificate exemption.

Proposed §9.20 provides two processes through which an individual may obtain the DOT cylinder filling exemption created by SB 1668. First, an individual may complete training and examination directly with PERC. An applicant for an exemption pursuant to this process in §9.20(1) must submit new LPG Form 16P, which will be proposed separately from the proposed amendments to Chapter 9. The applicant must also provide confirmation from PERC that the individual completed the PERC "Dispensing Propane Safely -- Small Cylinder" course and corresponding examination. Proposed new §9.20(1)(A)(ii)(III) states an effective date of July 18, 2022; this is the date the Commission expects the amendments will go into effect. However, the Commission will specify the correct effective date when the proposal is adopted.

The second process through which an individual may obtain the DOT cylinder filler certificate exemption is proposed in §9.20(2). This process requires an individual to complete an approved PERC based course under the supervision of a PERC outside instructor in accordance with §9.55.

Proposed §9.20(3) - (10) specify additional requirements for individuals who receive the DOT cylinder filler certificate exemption. Proposed §9.20(4) requires that individuals who are issued the exemption comply with certain Commission rules, which are not covered by the PERC Dispensing Propane Safely course. Proposed §9.20(6) clarifies that the exemption does not apply to individuals who fill containers mounted on a vehicle for mobile or motor fuel. Those individuals must meet the requirements of §9.8.

Other related amendments in §9.51(b) and (d)(4) and §9.52(a)(2)(C)(iv) add references to the DOT cylinder filler certificate exemption, and proposed new §9.52(h) provides continuing education credit for completion of a PERC outside instructor course. This is also reflected in proposed changes to Figure: 16 TAC §9.52(g)(1).

Finally, proposed new rule §9.55 contains the requirements for being approved as a PERC outside instructor such that an individual who takes courses and examinations administered by the PERC outside instructor is eligible for the DOT cylinder filler certificate exemption. The requirements of proposed new §9.55 are consistent with the existing requirements for outside instructors in §9.54, including the \$300 registration fee. Proposed §9.55(a) states that AFS may award training and certification or continuing education credit to DOT cylinder filling employee-level applicants and certificate holders for courses administered by a PERC outside instructor provided the PERC outside instructor complies with the requirements of §9.55. The PERC outside instructor may only offer training consistent with the guidelines established by the PERC Dispensing Propane Safely -- Small Cylinder course. The PERC instructor may use recorded training videos but shall proctor the course examination. A PERC outside instructor must also be employed by a company licensed to perform DOT cylinder filling activities and must be able to show the instructor has experience in performing or supervising LP-gas activities. Proposed §9.55 specifies procedures for applying to be a PERC outside instructor, which will include submission of a form to be proposed separately from the proposed amendments to Chapter 9. Procedures are also proposed for obtaining approval of course materials, training PERC outside instructors, revising course materials, maintaining approved PERC outside instructor status, and reporting information on completed courses and exams to AFS. Importantly, §9.55(c) and (d) require PERC outside instructors to include training on Commission rules 9.135, 9.136, 9.137, 9.141(d) and (g), and the entry for NFPA 58 §7.4.3.1 in Figure 9.403, and to attend the Train-the-Trainer course. These requirements ensure PERC outside instructors are preparing prospective DOT cylinder filler exemption holders to comply with Commission rules in addition to requirements included in PERC based training.

Senate Bill 1582

Senate Bill 1582 amended Natural Resources Code sections 113.087 and 113.088 to provide for licensing and registration examination to be performed by a proctoring service. The bill also removed the requirement that a testing service that administers an examination collect a nonrefundable examination fee on behalf of the Commission. The Commission proposes amendments in §9.10(c)(1)(c) to incorporate the use of an online testing or proctoring service and in subsection (c)(4)(F) to ensure any required fee is paid to the testing or proctoring service in addition to the Commission's examination fee. A similar reference is proposed in subsection (e).

House Bill 2714 (86th Legislature, 2019)

The Commission previously adopted amendments to implement House Bill 2714 from the 86th Legislative Session regarding manufacturer registration. During the rulemaking to implement the requirements of House Bill 2714, the Commission failed to add a reference to manufacturer registration in §9.26. Proposed amendments in §9.26(a) add the reference to manufacturer registration.

Other Proposed Amendments

In §9.2, the Commission proposes removing the definitions of "Advanced field training (AFT)" and "AFT materials." The Commission also proposes removing AFT requirements and references throughout the chapter because AFT is no longer required. These amendments are proposed in §§9.8, 9.52, and 9.54. The Commission also proposes removing the definition of "repair to container" in §9.2 and instead proposes clarification regarding cylinder repair in §9.6(e). Changes made to or maintenance of a cylinder or cargo tank excluded from the definition of repair in 49 CFR §§180.203, 180.403, and 180.413 do not require a license. In §9.6(b)(14) the Commission proposes adding a reference to 25 horsepower, and in §9.6(d) adding "subframing," both of which were inadvertently omitted from previously adopted amendments in Chapter 9.

The Commission proposes new §9.7(i) to move the text from §9.140 so that the requirement for a 24-hour emergency telephone number is included as part of the Commission's licensing requirements. The Commission proposes the addition of "A2" in §9.7(m)(2) because this license category was inadvertently omitted from previously adopted amendments in Chapter 9. New subsection (m)(3) is proposed to ensure the license categories repairing or testing ASME containers are filing the correct certificate of authorization from ASME and to address situations in which ASME is unable to issue authorization prior to a license expiration date.

The Commission proposes a change in §9.10(d)(1)(G) to clarify that the Recreational Vehicle Technician examination qualifies an individual to install and repair appliances on recreational vehicles in addition to the activities listed in existing subsection (d)(1)(G). In §9.16(e)(3), §9.22(a)(2), and §9.130, the Commission proposes to correct references to AFS and remove requirements for mailing; and in §9.51 and §9.52(e) and (f) proposes clarifying changes regarding AFS scheduling and registration for courses to reflect current Commission practice.

The Commission proposes removing outdated tables from existing §9.52(h) and proposes changes to list available continuing education courses in §9.52(e) and (f). Proposed changes in §9.52(i), renumbered as proposed subsection (g), clarify that CETP courses are now only offered for employee-level certificate holders. These changes are also reflected in new Figure: 16 TAC §9.52(g)(1).

In §9.126 and §9.143, the Commission proposes to change references to pneumatically-operated to pneumatically-actuated because pneumatically-actuated valves can be operated automatically or manually through the use of cables. In §9.134, the Commission proposes new subsection (d) to address situations where LPG Form 22 is required but an LP-gas licensee does not know who the previous installer was. In §9.140(g), the Commission proposes new wording to address protection for cylinders in the horizontal position. Cylinders in the vertical position are not addressed separately because the cages required by NFPA 58 §8.4.2.2 were determined to be sufficient protection in a study by the Southwest Research Institute.

Some proposed amendments clarify previously adopted amendments regarding the National Fire Protection Association (NFPA) standards. These amendments are not substantive but were inadvertently omitted from the previous adopted amendments in Chapter 9. The amendments proposed to clarify NFPA updates are found in §9.140(1) and (3), (d)(3), (f)(3) and (4), and (g)(2), and §9.141(b)(3) and (i), §9.142(b), and §9.211(b).

The Commission proposes amendments to §9.202 to coincide with the proposal of new forms, which will be proposed separately from these proposed amendments to Chapter 9.

The Commission also proposes changes to the Figure in §9.403. The Figure shows text from certain sections in NFPA 58 which the Commission has not adopted or has adopted with changes or with additional requirements. The text shown as underlined in the Figure indicates text that the Commission has added or changed from the NFPA 58 wording; the text shown with strike-outs indicates text that the Commission has deleted from the NFPA 58 text. In the case of this Figure, the underlining and strike-outs are retained in the adopted version of the Figure to show the changes. In this proposal, the specific changes to the Figure are found on the following rows: the rows for 5.2.8.1, 6.13.5, and 6.27.3.17 which correct a typographical error in the reference to §9.140(f) and the row for 6.8.2.1 which corrects a typographical error in the NFPA 58 section number. The row for 6.19.2 is being changed from an additional requirement to being adopted with changes; the Commission proposes to retain the wording of 6.19.12, including paragraphs (A) and (B), but adopts paragraph (C) to require compliance with §9.116. The addition of row 6.27.5.2 corrects an error from NFPA in the 2020 edition of NFPA 58; the change in the Figure ensures consistency with the NFPA tentative interim amendment issued for the 2020 version of NFPA 58, which the Commission has not yet adopted. In the row for 6.29.3.2, the Commission changes the wording to include the specific date of September 1, 2022, instead of the reference to two years from the effective date of the code.

April Richardson, Director, Alternative Fuels Safety Department, has determined that there will be a one-time cost to the Commission of approximately \$404 in programming costs based on four hours of programming to implement a new fee code associated with new LPG Form 16P. This cost will be covered using the Commission's existing budget. There are no anticipated fiscal implications for local governments as a result of enforcing the amendments and new rule.

Ms. Richardson has determined that there will be costs for those seeking a DOT Cylinder Filler Certificate Exemption pursuant to Natural Resources Code section 113.0955. The cost is \$40 per applicant for an exemption. However, an individual seeking certification to perform LP-gas activities must pay \$40 regardless of whether the individual is certified through the exemption process or the examination process. Therefore, the proposed amendments do not increase the cost for individuals seeking certification through the DOT cylinder filler exemption. In addition, an individual seeking to become an approved PERC outside instructor would be required to pay a \$300 registration fee. The \$300 registration fee is already required for individuals seeking to become outside instructors. Further, due to changes made by SB 1582, persons required to comply with the proposed amendments will incur the cost of taking an examination administered by a testing or proctoring service. The testing or proctoring service will determine the fee. There are no other anticipated costs for persons required to comply with the proposed amendments.

Ms. Richardson has also determined that the public benefit anticipated as a result of enforcing or administering the amendments will be compliance with recent changes to the Texas Natural Resources Code and increased public safety due to clarification of NFPA standards.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-busi-

nesses resulting from the proposed amendments and new rule; therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis required under §2006.002.

The Commission has determined that the proposed rulemaking will not affect a local economy; therefore, pursuant to Texas Government Code, §2001.022, the Commission is not required to prepare a local employment impact statement for the proposed rules.

The Commission has determined that the proposed amendments and new rule do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rules would be in effect, the proposed amendments would 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; or affect the state's economy. The proposed amendments could increase fees paid to the agency depending on the amount of PERC outside instructor applications the Commission receives. The proposed amendments decrease the number of individuals subject to the Commission's examination requirements and limit the examination rules' applicability. However, the Commission was required to waive the examination requirements by Senate Bill 1668. The amendments are proposed to align Commission rules with governing state statutes and national standards.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Friday, June 3, 2022. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Richardson at (512) 463-6935. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2, 9.6 - 9.8, 9.10, 9.16, 9.20, 9.22, 9.26, 9.51, 9.52, 9.54, 9.55

The Commission proposes the amendments and new rules under Natural Resources Code sections 113.087 and 113.088, amended by Senate Bill 1582 (87th Legislature, Regular Session), and Natural Resources Code section 113.0955, added by Senate Bill 1668 (87th Legislature, Regular Session). The Commission also proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.087, 113.088 and 113.0955.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

~~(2) Advanced field training (AFT)--The final portion of the training or continuing education requirements in which an individual shall successfully perform the specified LP-gas activities in order to demonstrate proficiency in those activities.~~

~~(3) AFT materials--The portion of a Commission training module consisting of the four sections of the Railroad Commission's LP-Gas Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer Record.~~

(2) ~~(4)~~ Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(3) ~~(5)~~ Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(4) ~~(6)~~ Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(5) ~~(7)~~ Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, pursuant to §9.10 of this title (relating to Rules Examination);

(B) who has passed the required employee-level qualification examination pursuant to §9.10 of this title;

(C) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States); ~~or~~

(D) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption); or ~~[-]~~

(E) who holds a current DOT cylinder filler certificate exemption pursuant to §9.20 of this title (relating to DOT Cylinder Filler Certificate Exemption).

(6) ~~(8)~~ Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(7) ~~(9)~~ CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(8) ~~(10)~~ Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, cylinder ex-

change operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(9) [(41)] Commission--The Railroad Commission of Texas.

(10) [(42)] Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(11) [(43)] Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(12) [(44)] Continuing education--Courses required to be successfully completed at least every four years by certificate holders to maintain certification.

(13) [(45)] Director--The director of AFS or the director's delegate.

(14) [(46)] DOT--The United States Department of Transportation.

(15) [(47)] Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, and owner-employees.

(16) [(48)] Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(17) [(49)] Leak grades--An LP-gas leak that is:

(A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or

(B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.

(18) [(20)] Licensed--Authorized by the Commission to perform LP-gas activities through the issuance of a valid license.

(19) [(21)] Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(20) [(22)] LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at the Secretary of State's web site or the Commission's web site.

(21) [(23)] LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(22) [(24)] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(23) [(25)] Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary

engine other than the engine to propel the vehicle or for other uses on the vehicle.

(24) [(26)] Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(25) [(27)] Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(26) [(28)] Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(27) [(29)] Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of ASTM International (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(28) [(30)] Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(29) [(31)] Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas activities and is authorized by the licensee to implement operational changes.

(30) [(32)] Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(31) [(33)] Outside instructor--An individual, other than a Commission employee, approved by AFS to teach certain LP-gas training or continuing education courses.

(32) [(34)] Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(33) [(35)] Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(34) [(36)] Property line--The boundary which designates the point at which one real property interest ends and another begins.

(35) [(37)] Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(36) [(38)] Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(37) [(39)] Registered manufacturer--A person who has applied for and been granted a registration to manufacture LP-gas containers by the Commission.

[(40)] Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.]

(38) [(41)] Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current rules in this chapter.

(39) [(42)] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(40) [(43)] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(41) [(44)] Self-service dispenser--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(42) [(45)] Service station--An LP-gas installation that, for retail purposes, operates a dispensing station and/or conducts cylinder filling activities.

(43) [(46)] Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(44) [(47)] Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(45) [(48)] Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(46) [(49)] Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(47) [(50)] Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(48) [(51)] Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, bulkheads, and equipment utilized in transferring LP-gas between containers.

(49) [(52)] Transport--Any bobtail or semitrailer equipped with one or more containers.

(50) [(53)] Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(51) [(54)] Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(52) [(55)] Ultimate consumer--A person who buys a product to use rather than for resale.

§9.6. *License Categories, Container Manufacturer Registration, and Fees.*

(a) (No change.)

(b) The license categories and fees are as follows.

(1) - (13) (No change.)

(14) A Category L license for engine and mobile fuel authorizes the sale and installation of LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor or mobile fuel systems over 25 horsepower. The original license fee is \$100; the renewal is \$50.

(15) - (18) (No change.)

(c) (No change.)

(d) A container manufacturer registration authorizes the manufacture, assembly, repair, subframing, testing and sale of LP-gas containers. The original registration fee is \$1,000; the renewal fee is \$600.

(e) Repair to a US DOT cylinder or cargo tank is defined in 49 CFR §§180.203, 180.403 and 180.413. Changes made to or maintenance of a cylinder or cargo tank excluded from the definition of repair in 49 CFR §§180.203, 180.403 and 180.413 do not require a license.

§9.7. *Applications for Licenses, Manufacturer Registrations, and Renewals.*

(a) - (f) (No change.)

(g) A licensee shall submit LPG Form 1A listing all outlets operated by the licensee.

(1) (No change.)

(2) Each outlet shall be listed on the licensee's renewal as specified in subsection (k) [(†)] of this section.

(h) (No change.)

(i) Applications for license or registration must include a 24-hour emergency telephone number that shall be:

(1) monitored at all times; and

(2) be answered by a person who is knowledgeable of the hazards of LP-gas and who has comprehensive LP-gas emergency response and incident information, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this section.

(j) [(†)] AFS will review an application for license or registration to verify all requirements have been met.

(1) If errors are found or information is missing on the application or other documents, AFS will notify the applicant of the deficiencies in writing.

(2) The applicant must respond with the required information and/or documentation within 30 days of the written notice. Failure to respond by the deadline will result in withdrawal of the application.

(3) If all requirements have been met, AFS will issue the license or manufacturer registration and send the license or registration to the licensee or manufacturer, as applicable.

(k) [(†)] For license and manufacturer registration renewals:

(1) AFS shall notify the licensee or registered manufacturer in writing at the address on file with AFS of the impending license or manufacturer registration expiration at least 30 calendar days before the date the license or registration is scheduled to expire.

(2) The renewal notice shall include copies of applicable LPG Forms 1, 1A, and 7, or LPG Form 1M showing the information currently on file.

(3) The licensee or registered manufacturer shall review and return all renewal documentation to AFS with any necessary changes clearly marked on the forms. The licensee or registered manufacturer shall submit any applicable fees with the renewal documentation.

(4) Failure to meet the renewal deadline set forth in this section shall result in expiration of the license or manufacturer registration.

(5) If a person's license or manufacturer registration expires, that person shall immediately cease performance of any LP-gas activities authorized by the license or registration.

(6) If a person's license or manufacturer registration has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee in §9.6 of this title (relating to License Categories, Container Manufacturer Registration, and Fees).

(7) If a person's license or manufacturer registration has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee.

(8) If a person's license or manufacturer registration has been expired for one year or more, that person shall not renew but shall comply with the requirements for issuance of an original license or manufacturer registration under subsection (f) or (h) of this section.

(9) After verification that the licensee or registered manufacturer has met all requirements for licensing or manufacturer registration, AFS shall renew the license or registration and send the applicable authorization to the licensee or manufacturer.

(l) ~~[(k)]~~ A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to AFS a fee that is equal to two times the renewal fee required by §9.6 of this title.

(1) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(2) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for LP-Gas Training and Continuing Education), and §9.52 of this title (relating to Training and Continuing Education).

(m) ~~[(h)]~~ Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category B or O license or renewal shall file with AFS a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign LPG Form 505.

(2) An applicant for Category A, A2, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with AFS a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

(3) An applicant for Category A, A1 or O license or renewal who repairs or tests ASME containers shall file with AFS a copy of its current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the manufacturer may request in

writing an extension of time not to exceed 60 calendar days past the expiration date. The request for extension shall be received by AFS prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A registered manufacturer shall not continue to operate after the expiration date of an ASME certificate of authorization until the manufacturer files a current ASME certificate of authorization with AFS or AFS grants a temporary exception.

§9.8. *Requirements and Application for a New Certificate.*

(a) - (b) (No change.)

(c) An applicant for a new certificate shall:

(1) file with AFS a properly completed LPG Form 16 and the applicable nonrefundable rules examination fee specified in §9.10 of this title (relating to Rules Examination);

(2) pass the applicable rules examination with a score of at least 75%; and

(3) complete any required training ~~[and/or AFT]~~ in §9.51 and §9.52 of this title.

(d) An applicant for a new DOT cylinder filler certificate exemption shall comply with the requirements of §9.20 of this title (relating to DOT Cylinder Filler Certificate Exemption).

(e) ~~[(d)]~~ An individual who holds an employee-level certificate who wishes to obtain a management-level certificate shall comply with the requirements of this section, including training and fees.

§9.10. *Rules Examination.*

(a) - (b) (No change.)

(c) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination.

(1) Dates and locations of available Commission LP-gas examinations may be obtained ~~[in the Austin offices of AFS and]~~ on the Commission's web site~~]; and shall be updated at least monthly].~~ Examinations may be administered: ~~[conducted]~~

(A) at the Commission's AFS Training Center in Austin; ~~]; between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and]~~

(B) at other designated ~~[times and]~~ locations around the state; and ~~[-]~~

(C) through an online testing or proctoring service.

(2) Individuals or companies may request in writing that examinations be given in their area. AFS shall schedule ~~[its]~~ examinations ~~[and locations]~~ at its discretion.

(3) ~~[(2)]~~ Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g) of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), the Category E, F, G, I, and J management-level rules examination shall be administered only in conjunction with the Category E, F, G, I, and J management-level courses of instruction. Management-level rules examinations other than Category E, F, G, I, and J may be administered on any scheduled examination day.

(4) ~~[(3)]~~ Exam fees.

(A) The nonrefundable management-level rules examination fee is \$70.

(B) The nonrefundable employee-level rules examination fee is \$40.

(C) The nonrefundable examination fee shall be paid each time an individual takes an examination.

(D) Individuals who register and pay for a Category E, F, G, I, or J training course as specified in §9.51(j)(2)(A) of this title (relating to General Requirements for LP-Gas Training and Continuing Education) shall pay the charge specified for the applicable examination.

(E) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to the requirements in §9.14 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal, training, or continuing education fees specified in §9.9 of this title (relating to Requirements for Certificate Holder Renewal, §9.51 of this title, and §9.52 of this title (relating to Training and Continuing Education).

(F) Individuals who register for an examination to be administered by a testing or proctoring service shall pay any required fee to the testing or proctoring service in addition to paying the examination fee to the Commission.

(5) [(4)] Time limits.

(A) An applicant shall complete the examination within the time limit specified in this paragraph.

(i) The Category E management-level (closed book), Bobtail employee-level (open book), and Service and Installation employee-level (open book) examinations shall be limited to three hours.

(ii) All other management-level and employee-level examinations shall be limited to two hours.

(B) The examination proctor shall be the official timekeeper.

(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(6) [(5)] The Commission may offer employee-level LP-Gas Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel Dispensing examinations in Spanish or English.

(d) This subsection specifies the examinations offered by the Commission.

(1) Employee-level examinations.

(A) - (F) (No change.)

(G) The Recreational Vehicle Technician examination qualifies an individual to install LP-gas motor or mobile fuel containers, including cylinders, and to install and repair LP-gas systems and appliances on recreational vehicles. The Recreational Vehicle Technician examination does not authorize an individual to fill LP-gas containers.

(H) - (J) (No change.)

(2) (No change.)

(e) Within 15 calendar days of the date an individual takes an examination, AFS shall notify the individual of the results of the examination. If the examination is graded or reviewed by a testing or

proctoring service, AFS shall notify the individual of the examination results within 14 days of the date AFS receives the results from the testing or proctoring service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFS shall notify the individual of the reason for the delay before the 90th day. AFS may require a testing or proctoring service to notify an individual of the individual's examination results.

(f) - (h) (No change.)

§9.16. *Hearings for Denial, Suspension, or Revocation of Licenses, Manufacturer Registrations, or Certificates.*

(a) - (b) (No change.)

(c) Suspension or revocation of licenses, manufacturer registrations, or certificates.

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

(3) The licensee, registered manufacturer, or certificate holder shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or shall request an extension of time in which to comply. The request for extension of the time to comply shall be received by AFS [LP-Gas Operations] within the same time frame specified in the notice for correction or discontinuance.

(d) (No change.)

§9.20. *DOT Cylinder Filler Certificate Exemption.*

An individual may perform work and directly supervise LP-gas activities requiring contact with LP-gas if the individual is granted the DOT Cylinder Filler Certificate Exemption. The exemption may be obtained by completing the Dispensing Propane Safely - Small Cylinder course, including examination, and complying with paragraph (1) of this section or by completing PERC outside instructor training and examination in accordance with paragraph (2) of this section.

(1) DOT Cylinder Filling Certificate Exemption through PERC.

(A) To be granted a DOT Cylinder Filler Certificate Exemption through PERC, the applicant shall:

(i) submit a properly completed LPG Form 16P;

(ii) submit a legible copy of the PERC certificate of completion, which shall:

(I) indicate that the Dispensing Propane Safely -- Small Cylinder course has been completed, including a copy of the transcript listing the Filling Cylinders by Weight examination was completed;

(II) be issued to the individual listed on LPG Form 16P; and

(III) have a completion date after July 18, 2022, and within six months of the date the LPG Form 16P is submitted;

(iii) submit a legible copy of a state-issued identification card or driver's license, including a photo; and

(iv) pay a \$40 registration fee.

(B) AFS will review the application to verify all requirements have been met.

(i) If errors are found or information is missing on the application or other documents, AFS shall notify the applicant of the deficiencies in writing.

(ii) The applicant must respond with the required information and/or documentation within 30 days of the written notice.

Failure to respond by the deadline will result in withdrawal of the application.

(iii) If all requirements have been met, the individual will become a certificate holder and AFS shall send a certificate to the licensee.

(2) DOT Cylinder Filling Certificate Exemption through PERC Outside Instructor.

(A) Any individual who completes an approved PERC based course under the supervision of a PERC outside instructor will be granted a DOT Cylinder Filler Certificate Exemption provided the PERC outside instructor submits the report as required in §9.55(j) of this title (relating to PERC Outside Instructor Training). The course shall include training and examination. The examination shall be proctored by a PERC outside instructor. If all requirements have been met, the individual will become a certificate holder and AFS shall send a certificate to the licensee listed on the PERC outside instructor's report.

(B) AFS may refuse to issue or renew a certificate for an individual who presents for credit an unapproved course; a course from an unapproved PERC outside instructor; or a course using unapproved, incomplete, or incorrect materials.

(3) The DOT Cylinder Filling Certificate Exemption does not become effective until the certificate is issued by AFS.

(4) Certificate holders issued a DOT Cylinder Filler Certificate exemption shall comply with the rules in this chapter, including the following rules:

(A) §9.135 of this title (relating to Unsafe or Unapproved Containers, Cylinders, or Piping);

(B) §9.136 of this title (relating to Filling of DOT Containers);

(C) §9.137 of this title (relating to Inspection of Cylinders at Each Filling);

(D) §9.141(d) and (g) of this title (relating to Uniform Safety Requirements); and

(E) the entry for NFPA 58 §7.4.3.1 in the Figure in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements).

(5) The DOT cylinder filler certificate exemption does not include the motor/mobile fuel filler certificate. Individuals may only fill US DOT cylinders by weight with this exemption. Universal cylinders, commonly used on forklifts and floor buffers, may be filled by volume using filling procedures required by §9.136 of this title (relating to Filling of DOT Containers).

(6) Individuals who will fill containers mounted on a vehicle for mobile or motor fuel must meet the requirements of §9.8(c) of this title (relating to Requirements and Application for a New Certificate).

(7) The certificate accrues to the individual and is nontransferable. An individual who has been issued a certificate shall make the certificate readily available and shall present it to any Commission employee or agent who requests proof of certification.

(8) Each individual shall:

(A) comply with all applicable continuing education requirements in §9.51 and §9.52 of this title (relating to General Requirements for LP-Gas Training and Continuing Education, and Training and Continuing Education, respectively);

(B) comply with renewal requirements in §9.9 of this title (relating to Requirements for Certificate Holder Renewal); and

(C) be employed by a licensee or a license-exempt entity in accordance with §9.7 of this title (relating to Application for Licenses, Manufacturer Registrations, and Renewals.

(9) Failure to comply with the renewal requirements in §9.9 of this title shall result in the expiration of the certificate. If an individual's exemption has been expired for more than two years, that individual shall complete all requirements necessary to apply for a new certificate.

(10) A military service member, military veteran, or military spouse shall be exempt from the original registration fee pursuant to the requirements in §9.14 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal fees specified in §9.9 of this title.

§9.22. Changes in Ownership, Form of Dealership, or Name of Dealership.

(a) Changes in ownership which require a new license or manufacturer registration.

(1) (No change.)

(2) Other changes in ownership. A change in members of a partnership occurs upon the death, withdrawal, expulsion, or addition of a partner. Upon the death of a sole proprietor or partner, the dissolution of a corporation or partnership, any change in the members of a partnership, or other change in ownership not specifically provided for in this section, an authorized representative of the previously existing dealership or of the successor in interest shall notify AFS in writing and shall immediately cease all LP-gas activities of the previously existing dealership which require an LP-gas license or manufacturer registration and shall not resume until AFS [LP-Gas Operations] issues an LP-gas license or manufacturer registration to the successor in interest.

(b) - (c) (No change.)

§9.26. Insurance and Self-Insurance Requirements.

(a) A licensee or registered manufacturer shall not perform any activity authorized by its license or registration under §9.6 of this title (relating to License Categories, Container Manufacturer Registration, and Fees) unless insurance coverage required by this section is in effect. LP-gas licensees, registered manufacturers, or applicants for license or manufacturer registration shall comply with the minimum amounts of insurance specified in Table 1 of this section or with the self-insurance requirements in subsection (i) of this section, if applicable. Registered manufacturers are not eligible for self-insurance. Before AFS grants or renews a manufacturer registration, an applicant for a manufacturer registration shall submit the documents required by paragraph (1) of this subsection. Before AFS grants or renews a license or manufacturer registration, an applicant for a license shall submit either: Figure: 16 TAC §9.26(a) (No change.)

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

(b) - (j) (No change.)

§9.51. General Requirements for LP-Gas Training and Continuing Education.

(a) (No change.)

(b) Applicants for new certificates, as set forth in §9.8 of this title (relating to Requirements and Application for a New Certificate) and persons holding existing certificates or a DOT cylinder filler certificate exemption shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply

with the training or continuing education requirements by the assigned deadline may regain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to AFS.

(c) (No change.)

(d) The continuing education requirements apply to the following individuals:

(1) Category D, E, F, G, I, J, K, and M management-level certificate holders;

(2) any ultimate consumer who has purchased, leased, or obtained other rights in any LP-gas bobtail, including any employee of such ultimate consumer if that employee drives or in any way operates the equipment on an LP-gas bobtail; ~~and~~

(3) individuals holding the following employee-level certifications:

- (A) bobtail driver;
- (B) DOT cylinder filler;
- (C) recreational vehicle technician;
- (D) service and installation technician;
- (E) appliance service and installation technician; and
- (F) motor/mobile fuel filler; ~~and [-]~~

(4) individuals holding a DOT cylinder filler certificate exemption.

(e) - (h) (No change.)

(i) Schedules. Dates and locations of available AFS LP-gas training and continuing education courses can be obtained ~~[in the Austin offices of AFS, and]~~ on the Commission's web site ~~[and shall be updated at least monthly]~~. AFS courses shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that AFS courses be taught in their area. AFS shall schedule ~~[its] courses [and locations]~~ at its discretion.

(j) Course registration and scheduling.

(1) Registering for a course. To register for a scheduled training or continuing education course, an individual shall complete the online registration process at least seven days prior to the course. ~~[AFS shall also accept course registrations via regular mail, electronic mail (e-mail), or facsimile transmission (fax). Such requests shall include the applicant's full name, address, phone number, level (either manager or employee) and category of certification (such as cylinder filling or service and installation), e-mail address, and the name or number, location, and date of the requested course.]~~

(2) Costs for courses.

(A) - (C) (No change.)

(D) Continuing education courses shall be offered at no charge to certificate holders who have timely paid the annual certificate renewal fee specified in §9.9 of this title (relating to Requirements for Certificate Holder Renewal).

(E) - (F) (No change.)

(3) ~~[Course scheduling. AFS shall schedule individuals to attend courses on a first-come, first-served basis, based on when the course fee is paid except as follows:]~~

~~[(A) Priority for attending the 16-hour Category F, G, I, and J course, and the 80-hour Category E course is based on when the course fee is paid.]~~

~~[(B) Priority for attending courses other than the 16-hour Category F, G, I, and J course, and the 80-hour Category E course shall be given to applicants or certificate holders who must comply with training or continuing education requirements by the next May 31 deadline.]~~

~~[(C)] If any course has fewer than eight individuals registered within seven calendar days prior to the course, AFS may cancel the course and may reschedule the registered individuals in another course agreed upon by the individuals and the AFS training section. The AFS training section reserves the right to determine the number of course registrants.~~

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

(k) - (l) (No change.)

§9.52. *Training and Continuing Education.*

(a) Training. Individuals identified in §9.51(c) of this title (relating to General Requirements for LP-Gas Training and Continuing Education) shall complete training.

(1) (No change.)

(2) Training requirements.

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

(C) Category D, K and M management-level applicants and all applicants for employee-level certifications that are subject to training requirements shall complete an eight-hour course. A certificate holder's training deadline shall not be extended if that individual retakes and passes an examination for the current category and level of certification. A training deadline shall be extended only after a certificate holder successfully completes an applicable training course.

(i) - (iii) (No change.)

(iv) DOT Cylinder Filler applicants shall complete the 2.1 course unless the individual is issued a DOT cylinder filler certificate exemption.

(v) - (ix) (No change.)

(3) Individuals who pass an employee-level rules examination between March 1 and May 31 of any year shall have until May 31 of the next year to complete any required training. Individuals who pass an employee-level rules examination at other times shall have until the next May 31 to complete any required training. ~~[Completion of AFT shall be in accordance with subsection (g) of this section.]~~

(4) (No change.)

(b) Continuing education. A certificate holder shall complete at least eight hours of continuing education every four years as specified in this subsection. Continuing education courses are specified in subsection (e) ~~[(g)]~~ of this section.

(1) - (6) (No change.)

(c) - (d) (No change.)

~~[(e) Course materials. Individuals who attend AFS-taught training courses shall receive a copy of the course materials at no charge. Additional copies may be purchased from AFS at the established price.]~~

~~[(f) Certificates of completion. The AFS training section shall issue a certificate of completion to each individual who completes a management-level course.]~~

[(g) Advanced field training (AFT). Some courses may include AFT in addition to the classroom hours, during which course attendees shall perform LP-gas activities. AFT shall be properly completed within 30 calendar days of attending the course. All qualification tasks included in the AFT shall be completed. The AFT materials, including the qualification checklist and the certification page, shall be readily available at the licensee's Texas business location for review by an authorized Commission representative during normal business hours.]

[(1) The responsibility of certifying AFT activities shall not be delegated to an unauthorized individual. AFT qualification tasks shall be witnessed by an authorized individual, verified as being successfully completed, and the AFT form signed as follows:]

[(A) For licensees with only one company representative, that company representative shall self-certify the AFT.]

[(B) For licensees with more than one company representative, one company representative may certify the AFT of another company representative, but shall not self-certify.]

[(C) Company representatives shall certify operations supervisors' AFT.]

[(D) The company representative or an operations supervisor authorized by the licensee and in current good standing with the Commission shall certify the employees' AFT.]

[(E) If authorized, a Commission-approved outside instructor may certify any AFT.]

[(2) Other AFT situations shall be handled as follows:]

[(A) For a certified individual employed by a licensee, the licensee shall retain the most recently completed AFT material for each applicable category of the individual's certification in the individual's employment records.]

[(B) For an individual who ceases employment with a licensee, the licensee shall retain the latest required AFT material for at least two years from the date the individual is no longer employed by the licensee. The two-year period shall be based on the renewal period for the examination renewal fee penalty. The licensee shall provide a copy of the AFT material to the individual.]

[(C) For an individual who begins employment with a different licensee, the new licensee shall obtain a copy of the individual's AFT material from the individual and shall place the copy in the individual's employment records.]

[(D) An individual who is never employed by a licensee shall retain the most recently completed AFT material for each applicable category of the individual's certification in a safe location for at least two years from the date the course that required the AFT was attended.]

[(E) For an individual who is employed by a licensee when a course requiring AFT is attended, but who prior to the AFT's being certified becomes employed by a new licensee, the new licensee shall certify the individual's AFT.]

[(F) For an individual who is employed by a licensee when a class requiring AFT is attended, but who prior to the AFT's being certified ceases employment with the licensee and wishes to continue performing LP-gas activities, the individual shall contact a company representative or operations supervisor of another applicable licensee or an Commission-approved outside instructor to complete the AFT and maintain the LP-gas certification.]

[(3) Individuals who attend the 80-hour Category E management-level course or the 16-hour Category F, G, I, and J manage-

ment-level course shall perform any required AFT activities during the course.]

[(4) If AFT is required for a course, the AFT checklist outlining the specific activities to be performed shall be included in the course materials.]

[(5) A certified individual is exempt from the AFT requirement of a continuing education course if the individual has previously completed that same course, including the AFT.]

(c) [(h)] Certificate holders may complete their continuing education requirement by attending a continuing education course for their specific certificate as listed in this subsection or by attending a CETP course listed in subsection (g) of this section: [Available training and continuing education courses are shown in Tables 1 through 4 of this subsection. Items on the tables marked with an "x" indicate courses that meet training or continuing education requirements for management-level or employee-level certificate holders in that category.]
[Figure: 16 TAC §9.52(h)]

(1) the 4.1 Employee-Level Dispenser Operations Continuing Education course;

(2) the 4.2 Employee-Level Service and Installation Continuing Education course;

(3) the 4.3 Employee-Level Bobtail Driver Continuing Education course;

(4) the 4.4 Employee-Level Recreational Vehicle Technician Continuing Education course; and

(5) the 6.1 Regulatory Compliance for Managers course.

(f) Continuing education credit for certificate holders.

(1) Individuals holding the following certificates or exemption may receive continuing education credit for the 4.1 Employee-Level Dispenser Operations Continuing Education course:

(A) a DOT Cylinder Filler certificate;

(B) a Motor/Mobile Fuel Filler certificate; and/or

(C) a DOT cylinder filler certificate exemption.

(2) Individuals holding the following certificates may receive continuing education credit for the 4.2 Employee-Level Service and Installation Continuing Education course:

(A) a Service and Installation Technician certificate;
and/or

(B) an Appliance Service and Installation Technician certificate.

(3) Individuals holding a Recreational Vehicle Technician certificate may receive continuing education credit for the 4.4 Employee-Level Recreational Vehicle Technician Continuing Education course.

(4) Individuals holding a Bobtail Driver certificate may receive continuing education credit for the 4.3 Employee-Level Bobtail Driver Continuing Education course.

(5) To meet continuing education requirements, all management-level certificate holders shall complete one of the following courses:

(A) the 6.1 Regulatory Compliance for Managers course; or

(B) a course listed in paragraphs (1) - (4) of this subsection.

(6) Any employee-level or management-level certificate holder may also receive continuing education credit by completing any training course listed in subsection (a)(1) of this section for the certificate held by the individual.

(g) [(h)] Credit for CETP courses. An employee-level [A] certificate holder who has successfully completed a CETP course, including any applicable knowledge and skills assessments, may receive credit toward the continuing education requirements specified in this section as follows:

(1) Items on the table marked with an "x" indicate CETP courses that meet continuing education requirements for employee-level certificate holders in that category. [The CETP course shall be approved for the category of certificate held as indicated on Tables 3 and 4 in subsection (h) of this section.]

Figure: 16 TAC §9.52(g)(1)

[Figure: 16 TAC §9.52(g)(1)]

(2) The successful completion of a CETP course is determined by a CETP course certificate, which is issued only after an individual has completed the prescribed course of study, including any related knowledge and skills assessments, for the applicable CETP job classification.

(3) To receive credit toward the Commission's continuing education requirements, the certificate holder shall submit the following information, clearly readable, to AFS:

(A) the individual's full name, address, and telephone number;

(B) a copy of the certificate holder's certificate; and

(C) a legible copy of the official CETP course certificate.

(4) AFS shall review the submitted material within 30 business days of receipt and shall notify the certificate holder in writing that the request is approved, denied, or incomplete.

(A) If the request is approved, the certificate holder will receive continuing education credit. AFS will send a new certificate if the request is submitted as part of the renewal process in §9.9 of this title (relating to Requirements for Certificate Holder Renewal).

(B) If the request is denied, the certificate holder may submit additional information for review.

(C) [(A)] If the material is incomplete, AFS shall identify the necessary additional information required.

(D) [(B)] If the request is denied or incomplete, the [The] certificate holder shall file any [the] additional information within 30 calendar days of the date of the [a] notice [of deficiency] in order to receive credit for the CETP course attendance.

(E) [(C)] Certificate holders requesting credit for CETP course attendance shall submit such requests to allow processing time so that a request is finally approved by May 31 in order for the certificate holder to receive credit toward that deadline.

(h) Credit for PERC Outside Instructor Course Attendance. Individuals shall receive credit for attending a PERC outside instructor course per §9.20(2) of this title (relating to DOT Cylinder Filler Certificate Exemption).

§9.54. Commission-Approved Outside Instructors.

(a) (No change.)

(b) Application process. Outside instructor applicants shall submit the following to AFS:

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

(3) for each course the outside instructor applicant intends to teach:

(A) the curriculum for and a description of the course; and

(B) the course materials and related supporting information or a statement that the instructor will use the AFS course materials;

[(C) a statement specifying whether the outside instructor seeks approval to certify any AFT described in §9.52 of this title (relating to training and continuing education)];

(4) proof that the outside instructor applicant has experience, during at least three of the four years prior to the date of filing the application, in both:

(A) conducting LP-gas training or continuing education courses; and

(B) performing or supervising LP-gas activities; and

(5) any other information required by this section.

(c) - (l) (No change.)

§9.55. PERC Outside Instructor Training.

(a) General. AFS may award training and certification or continuing education credit to DOT cylinder filling employee-level applicants and certificate holders for courses administered by a PERC outside instructor provided the PERC outside instructor complies with the requirements of this section.

(1) PERC outside instructors may only offer training consistent with the guidelines established by the PERC Dispensing Propane Safely - Small Cylinder course.

(2) The PERC outside instructor may train individuals using recorded video materials approved under this section but shall proctor the course examination. The PERC outside instructor may proctor an exam in person or using live video.

(3) PERC outside instructors shall be employed by a company licensed to perform DOT cylinder filling activities.

(4) LP-gas licensees may offer courses to their own employees provided that the PERC outside instructor complies with the requirements of this section.

(5) All PERC outside instructor curriculum and course materials shall:

(A) meet the requirements of subsection (c) of this section;

(B) be submitted to AFS for review; and

(C) be organized and easily readable.

(b) Application process. PERC outside instructor applicants shall submit to AFS:

(1) the form prescribed by AFS for the PERC outside instructor application;

(2) a non-refundable \$300 registration fee;

(3) the following for the PERC based course to be taught:

(A) a description of the course;

(B) the course curriculum, consistent with the requirements of subsection (c) of this section;

(C) course examination materials; and

(D) links to or digital copies of any videos included in the course curriculum or examination materials;

(4) proof that the PERC outside instructor applicant has experience, during at least three of the four years prior to the date of filing the application, in performing or supervising LP-gas activities; and

(5) any other information required by this section.

(c) Curriculum standards. The course curriculum must be consistent with the guidelines established by the PERC Dispensing Propane Safely - Small Cylinder course and shall also include training on the requirements listed in §9.20(4) of this title (relating to DOT Cylinder Filler Certificate Exemption).

(d) AFS review. AFS shall review the application for approval as a PERC outside instructor and, within 14 business days of the date AFS receives the application, shall notify the applicant in writing that the application is approved, denied, or incomplete.

(1) Approved applications

(A) Additional requirements for approval. PERC outside instructor applicants whose applications are approved in writing by AFS shall attend AFS' Train-the-Trainer Course, the fee for which is included in the \$300 registration fee.

(i) The initial Train-the-Trainer Course shall include the classroom instruction and examination for the DOT cylinder filler certification.

(ii) The PERC outside instructor applicant shall pass the DOT cylinder filler examination referenced in §9.10(d)(1)(F) of this title (relating to Rules Examination) with a score of at least 85 percent.

(B) Notification of approval. Within 10 business days of the PERC outside instructor applicant's completion of the requirements of this section, AFS shall notify the applicant in writing that the applicant is approved as a PERC outside instructor and the PERC outside instructor may then begin offering courses.

(C) Term of approval. AFS approval of a PERC outside instructor remains valid for three years unless the Commission revokes the approval pursuant to subsection (f) of this section.

(2) Denied applications. If an application is denied, AFS' notice of denial shall identify the reason the applicant does not meet the requirements of subsections (a) - (c) of this section.

(3) Incomplete applications.

(A) If an application is incomplete, AFS' notice of deficiency shall identify the necessary additional information, including any deficiencies in course curriculum or materials.

(B) The applicant shall file the necessary additional information within 30 calendar days of the date of AFS' notice of deficiency.

(C) The applicant's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the application and the necessity of the applicant again paying the non-refundable \$300 registration fee for each subsequent filing of an application.

(e) Revision of course materials. PERC outside instructors must use the materials submitted to and approved by AFS. A PERC outside instructor who revises any course materials previously approved by AFS shall submit the revisions in writing, along with a nonrefundable \$100 review fee to AFS.

(1) The nonrefundable \$100 review fee shall be waived if the course materials are revised as a result of changes made by PERC to its Dispensing Propane Safely - Small Cylinder course or examination materials.

(2) A PERC outside instructor shall not use materials in a course until the outside instructor has received written AFS approval.

(3) AFS shall review the revised course materials and, within 14 business days, shall notify the PERC outside instructor in writing that the revised course materials are approved or not approved.

(4) If the revised course materials are not approved:

(A) AFS' notice shall identify the portion or portions that are not approved and/or shall describe any deficiencies in the revised course materials.

(B) The PERC outside instructor shall file any necessary additional information within 30 calendar days of the date of AFS' notice.

(C) The PERC outside instructor's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the request for approval of revised course materials and the necessity of again paying the \$100 review fee for each subsequent filing of revised course materials.

(5) Once approved, the revised course materials may be used in the PERC outside instructor's course.

(f) Continuing requirements. Approved PERC outside instructors shall:

(1) maintain their certificates in continuous good standing. Any interruption of the required certificates may result in the Commission revoking or suspending the PERC outside instructor's approval;

(2) renew their AFS PERC outside instructor approval every three years by paying a nonrefundable \$150 renewal fee to AFS;

(3) attend a Train-the-Trainer refresher course prior to the PERC outside instructor's next renewal deadline. The Train-the-Trainer course shall not count as credit towards any training or continuing education requirements; and

(4) adhere to professional standards of conduct in course administration.

(g) PERC outside instructor additional responsibilities.

(1) PERC outside instructors are responsible for every aspect of the courses they administer, including the location, schedule, date, time, duration, content, material, demeanor and conduct of the PERC outside instructor, and reporting of attendance information.

(2) AFS may monitor or supervise courses or exams administered by PERC outside instructors.

(h) Complaints. Complaints regarding PERC outside instructors shall be made to AFS in writing by e-mail, fax, or U. S. Postal Service and shall:

(1) include the complainant's printed name, address, and telephone number;

(2) be signed by the complainant if filed by fax or U.S. Postal Service;

(3) state the PERC outside instructor's name and the course date, location, and title; and

(4) describe the facts that show the PERC outside instructor:

(A) failed to meet or maintain AFS requirements for PERC outside instructor approval;

(B) failed to deliver a course as approved, including failure to follow the approved curriculum, to use the approved course materials, or to deliver the requisite numbers of hours of instruction; or

(C) engaged in other conduct, including the use of language, that created an atmosphere not conducive to learning. Such conduct includes but is not limited to demeaning, derogating, or stereotyping women or men, disabled persons, members of any political, religious, racial, or ethnic group, or a particular individual, organization, or product.

(i) Analysis

(1) As a result of AFS monitoring or supervising a course pursuant to subsection (g)(2) of this section or upon receipt of a complaint pursuant to subsection (h) of this section and at its discretion, AFS may gather any additional information necessary or appropriate to making a full and complete analysis.

(A) AFS shall send a written analysis and any findings to the PERC outside instructor who conducted the course monitored or supervised by AFS or that is the subject of the complaint.

(B) The PERC outside instructor may file a written response within 20 calendar days from the date of AFS' findings.

(2) If AFS determines that a PERC outside instructor has engaged in conduct prohibited by this section, AFS may prepare a report that states the facts on which the determination is based and the recommended action AFS intends to take.

(A) AFS may:

(i) issue a written warning to the PERC outside instructor;

(ii) decline to approve or renew the PERC outside instructor's approval; or

(iii) revoke the PERC outside instructor's approval.

(B) AFS shall:

(i) send a written copy of the report and recommendation to the PERC outside instructor; and

(ii) include a statement that the PERC outside instructor has a right to a hearing on the determination contained in the report.

(C) Within 20 calendar days after the date the notice is postmarked, the PERC outside instructor shall file a written response either accepting the determination and recommended action or requesting a hearing on the determination.

(i) If a PERC outside instructor requests a hearing, the AFS director shall refer the matter to the Hearings Division.

(ii) Following the hearing, the Commission may enter an order finding that the PERC outside instructor has violated Commission rules or that no violation has occurred; and may make any other finding based on the evidence in the record.

(iii) If the PERC outside instructor does not comply with the order of the Commission, and if the enforcement of the Commission's order is not stayed, then the Office of General Counsel may refer the matter to the attorney general for enforcement of the Commission's order.

(D) If the PERC outside instructor accepts the determination, the PERC outside instructor shall notify AFS in writing of the

acceptance, and AFS shall take the action indicated in the report. If the PERC outside instructor does not respond to the report timely, AFS shall take the action indicated in the report.

(j) Completed courses.

(1) Within three business days of the conclusion of a course, PERC outside instructors shall report to AFS the following information:

(A) the PERC outside instructor's name and last four digits of the instructor's social security number or RRC identification number;

(B) employing licensee's name and license number;

(C) date of the course;

(D) list of the persons completing the course, including the following information for each individual listed:

(i) full name,

(ii) last four digits of the person's social security number or RRC identification number; and

(iii) personal mailing address.

(2) The report shall be made electronically.

(3) The PERC outside instructor shall ensure that AFS receives the report by securing written acknowledgment of its receipt by AFS.

(4) A \$40 registration fee shall be submitted for each individual listed in paragraph (1)(D) of this subsection.

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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Railroad Commission of Texas

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For further information, please call: (512) 475-1295



SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS

16 TAC §§9.126, 9.130, 9.134, 9.140 - 9.143

The Commission proposes the amendments under Natural Resources Code sections 113.087 and 113.088, amended by Senate Bill 1582 (87th Legislature, Regular Session), and Natural Resources Code section 113.0955, added by Senate Bill 1668 (87th Legislature, Regular Session). The Commission also proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.087, 113.088 and 113.0955.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.126. *Appurtenances and Equipment.*

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

(d) ASME containers with an individual water capacity over 4,000 gallons shall comply with paragraph (1) or (2) of this subsection:

(1) For container openings 1 1/4-inch or greater in size:

(A) the container shall be equipped with:

(i) a pneumatically-actuated [~~pneumatically operated~~] internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet (1.5 meters) of the internal valve;

(ii) - (iii) (No change.)

(B) - (D) (No change.)

(2) For container openings less than 1 1/4-inch in size, the container shall be equipped with:

(A) (No change.)

(B) a pneumatically-actuated [~~pneumatically operated~~] internal valve with an integral excess-flow valve or excess-flow protection; or

(C) (No change.)

§9.130. *Commission Identification Nameplates.*

(a) Prior to an original ASME nameplate or any manufacturer-issued nameplate becoming unreadable or detached from a stationary container with a water capacity of 4,001 gallons or more, the owner or operator of the container may request an identification nameplate from AFS. Commission identification nameplates shall be issued only for containers which can be documented as being in continuous LP-gas service in Texas from a date prior to September 1, 1984. The container's serial number and manufacturer on the original or manufacturer-issued nameplate shall be clearly readable at the time the Commission identification nameplate is attached.

(1) (No change.)

(2) AFS shall review LPG Form 502 and the supporting documentation. AFS shall have the manufacturer's data report on file for the container or the licensee shall provide a copy to AFS [LP-Gas Operations]. The Commission identification nameplate shall not be issued unless the manufacturer's data report is reviewed. Upon review of submitted documents and confirmation of the manufacturer's data report, AFS [LP-Gas Operations] shall send [mail] a letter to the owner or operator of the container stating the estimated costs, which will be based on the following:

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

(3) - (6) (No change.)

(b) - (f) (No change.)

§9.134. *Connecting Container to Piping*

(a) LP-gas piping shall be installed only by a licensee authorized to perform such installation, a registrant authorized by §9.13 of this title (relating to General Installers and Repairman Exemption), or an individual exempted from licensing as authorized by Texas Natural Resources Code, §113.081.

(b) A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to make such installation, except that connection may be made to piping

installed by an individual on that individual's single family residential home.

(c) A licensee may connect to piping installed by an unlicensed person provided the licensee has verified that the piping is free of leaks and has been installed according to the rules in this chapter, and filed with AFS a completed LPG Form 22, identifying the unlicensed person who installed the LP-gas piping.

(d) A licensee is not required to submit LPG Form 22 pursuant to subsection (c) of this section only if the piping system is currently in service and no new piping is installed, the system is in good working order, and the installer cannot be determined.

§9.140. *System Protection Requirements.*

(a) - (b) (No change.)

(c) In addition to NFPA 58, §§6.21.4.2, 6.22.3.2(3), 6.27.3.7, 8.2.1.1, and 6.5.4.5, fencing at LP-gas installations shall comply with the following:

(1) Uprights, braces, and cornerposts of the fence shall be composed of noncombustible material and shall be anchored in concrete a minimum of 12 inches below the ground.

(2) (No change.)

(3) ASME containers or manual dispensers originally manufactured to or modified to be considered by AFS as self-contained units are exempt from the fencing requirements. Self-contained units shall be protected as specified in subsection (d) of this section;

(4) (No change.)

(d) In addition to NFPA 58, §§6.8.1.2, 6.8.6.1(A)-(E), 6.8.6.2(F), 6.27.3.13 and 6.27.3.14, vehicular barrier protection at LP-gas installations, except as noted in this section, shall comply with the following:

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

(3) Locations which have a perimeter fence prohibiting public traffic to the container or cylinder storage area shall not be required to have guardrailings if the vertical supports are located no more than three feet apart.

(4) [~~(3)~~] Openings in horizontal guardrailings, except the opening that is permitted directly in front of a bulkhead, shall not exceed three feet. Only one opening is allowed on each side of the guardrailings. A means of temporarily removing the horizontal guardrailings and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailings and vertical supports. In no case shall the protection provided by the horizontal guardrailings and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only through the 45-degree opening in front of the bulkhead or over the horizontal guardrailings.

(5) [~~(4)~~] Clearance of at least three feet shall be maintained between the vehicular barrier protection and any part of an LP-gas transfer system or container or clearance of two feet for retail service station installations. The two vertical supports at the ends of any vehicular barrier protection which protects a bulkhead shall be located a minimum of 24 and a maximum of 36 inches at 45-degree angles to the nearest corner of the bulkhead.

(6) [~~(5)~~] Vehicular barrier protection shall extend at least three feet beyond any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic.

(7) [~~(6)~~] Installations which have highway barriers located between vehicular traffic and the container and material handling

equipment shall not be required to have vehicular barrier protection installed.

(e) (No change.)

(f) In addition to NFPA 58 §5.2.8.1, LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. An asterisk indicates that the requirement applies to the equipment or location listed in that column.

Figure: 16 TAC §9.140(f) (No change.)

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

(3) Items 1, 2, and 3 in the column entitled "Licensee or Non-Licensee ASME 4001+ Gal. A.W.C." in Table 1 apply to installations with 4,001 gallons or more aggregate water capacity protected only by vehicular barrier protection [guardrailing] as required in subsection (d) of this section, and bulkheads as required by §9.143 of this title (relating to Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More) for commercial, bulk storage, cylinder filling, or forklift installations.

(4) Item 7 in the column entitled "Storage Racks for DOT Portable or Forklift Containers" in Table 1 may be met with lettering only one rack when multiple racks are installed.

(5) [(4)] Item 11 in the column entitled "Requirements" in Table 1 applies to facilities which have two or more containers.

(6) [(5)] Item 13 in the column entitled "Requirements" in Table 1 applies to outlets where an LP-gas certified employee is responsible for the LP-gas activities at that outlet, when a licensee's employee is the operations supervisor at more than one outlet as required by §9.17(a) of this title (relating to Designation and Responsibilities of Company Representative and Operations Supervisor).

(7) [(6)] Any information in Table 1 of this subsection required for an underground container shall be mounted on a sign posted within 15 feet horizontally of the manway or the container shroud.

(8) [(7)] Licensees and non-licensees shall comply with operational and/or procedural actions specified by the signage requirements of this section.

[(8) Any 24-hour emergency telephone numbers shall be:]

[(A) monitored at all times; and]

[(B) be answered by a person who is knowledgeable of the hazards of LP-gas and who has comprehensive LP-gas emergency response and incident information; or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this section.]

(g) In addition to NFPA 58, §8.4.2.2, storage racks used to store DOT cylinders in the horizontal position [nominal 20-pound DOT portable or any size forklift containers] shall be protected against vehicular damage by:

(1) the use of concrete curbs and/or wheel stops provided:

(A) the cylinder storage rack is located a minimum of 48 inches behind a curb or wheel stop that is a minimum of five inches in height above the grade of the driveway or parking area;

(B) if the requirements of subparagraph (A) cannot be met, the cylinder storage rack must be installed a minimum of 48 inches behind a curb or wheel stop that is a minimum of four inches in height above the grade of the driveway or parking area, and a wheel stop at

least four inches in height must be installed at least 12 inches from the curb or first wheel stop; and

(C) if wheel stops are used, all wheel stops must be secured against displacement; or

~~[(1) meeting the guardrail requirements of subsection (d) of this section; or]~~

(2) if curbs and/or wheel stops are not installed, guard posts or vehicular barrier protection shall be [installing guard posts, provided the guard posts are] installed a minimum of 18 inches from each storage rack, and:

(A) consist of at least three-inch schedule 40 steel pipe, capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, no more than four feet apart, and anchored in concrete at least 12 [30] inches below ground and rising at least 30 inches above the ground; [or]

(B) [are] constructed of at least four-inch schedule 40 steel pipe capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, and attached by welding to a minimum 8-inch by 8-inch steel plate at least 1/2 inch thick. The installed height of the post must be a minimum of 30 inches above the ground. The guard posts and [8] steel plate shall be permanently installed and securely anchored to a concrete driveway or concrete parking area; or [.]

(C) meet the requirements of subsection (d) of this section.

~~[(3) Guardrail or guard posts are not required to be installed if:]~~

~~[(A) the cylinder storage rack is located a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of five inches in height above the grade of the driveway or parking area; or]~~

~~[(B) if the requirements of subparagraph (A) cannot be met, the cylinder storage rack must be installed a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of four inches in height above the grade of the driveway or parking area, and a concrete wheel stop at least four inches in height must be installed at least 12 inches from the curb or first wheel stop;]~~

~~[(4) All parking wheel stops and cylinder storage racks in paragraph (3) of this subsection must be secured against displacement.]~~

(h) Fencing, guardrails, and valve locks shall be maintained in good condition at all times in accordance with this chapter.

(i) [(h)] Self-service dispensers shall be protected against vehicular damage by:

(1) vehicular barrier protection that complies with subsection (d) of this section; or

(2) vertical supports that comply with subsection (d) of this section; or

(3) where routine traffic patterns expose only the approach end of the dispenser to vehicular damage, support columns, concrete barriers, bollards, inverted U-shaped guard posts anchored in concrete, or other protection acceptable to AFS, provided:

(A) the cylinder storage rack is located a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of five inches in height above the grade of the driveway or parking area;

(B) if the requirements of subparagraph (A) cannot be met, the cylinder storage rack must be installed a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of four inches in height above the grade of the driveway or parking area, and a concrete wheel stop at least four inches in height must be installed at least 12 inches from the curb or first wheel stop. [s]

(j) [(#)] Self-service dispensers utilizing protection specified in paragraphs (2) -(3) of subsection (h) of this section shall be connected to supply piping by a device designed to prevent the loss of LP-gas in the event the dispenser is displaced. The device must retain liquid on both sides of the breakaway point and be installed in a manner to protect the supply piping against damage.

§9.141. *Uniform Safety Requirements.*

(a) (No change.)

(b) In addition to NFPA 58, §6.27.4.2, each LP-gas private or public motor/mobile or forklift refueling installation which includes a liquid dispensing system shall incorporate into that dispensing system a breakaway device.

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

(3) In addition to NFPA 58, §6.27.4.1, the overall length of hose on vehicle fuel dispensers used to transfer LP-gas into engine fuel and mobile containers on vehicles shall not exceed 18 feet measured from the point where the hose attaches to rigid piping downstream of the pump to the end of the dispensing hose. If a section of hose not exceeding 36 inches in length is installed for flexibility between the listed emergency breakaway device and the rigid piping downstream of the pump, then the 18 feet of dispensing hose will be measured from the outlet of the emergency breakaway device.

(c) - (h) (No change.)

(i) Racks used to store cylinders awaiting use or resale shall be installed on firm, level ground. In addition to NFPA 58 §8.4.1.1, a distance of five feet shall be maintained between the rack and any sources of ignition and combustible materials.

§9.142. *LP-Gas Container Storage and Installation Requirements.*

(a) Except as noted in this section and in addition to NFPA 58 §6.4.1.1, LP-gas containers shall be stored or installed in accordance with the distance requirements in NFPA 58, §§6.2.2, 6.4.4, and 8.4.1 and any other applicable requirements in NFPA 58 or the rules in this chapter.

(1) An LP-gas liquid dispensing installation other than a retail operated service station installation is not required to have a pump, provided that the storage containers are located one and one half times the required distances specified in NFPA 58, §6.4.1.1, or a minimum distance of 15 feet if the storage container is less than 125 gallons water capacity.

(2) Any LP-gas container constructed prior to 1970 which has an odd-numbered water gallon capacity (for example, 517 water gallons instead of 500 water gallons) that is not more than 5.0% greater than the standard water gallon capacity may be installed utilizing the minimum distance requirement based on the standard water gallon capacity.

(b) Each industrial plant, bulk plant, and distributing point with an aggregate water capacity of 4,000 gallons or less shall be provided with at least one portable fire extinguisher in accordance with NFPA 58 §4.7 having a minimum capacity of 18 lb (8.2 kg) of dry chemical.

§9.143. *Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.*

(a) Instead of NFPA 58, §6.14, all new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more shall:

(1) (No change.)

(2) install one of the following in all container openings 1 1/4 inches or greater, as required in this section and §9.126 of this title (relating to Apparances and Equipment):

(A) pneumatically-actuated [~~pneumatically-operated~~] emergency shutoff valves (ESV);

(B) pneumatically-actuated [~~pneumatically-operated~~] internal valves;

(C) pneumatically-actuated [~~pneumatically-operated~~] API 607 ball valves; or

(D) (No change.)

(b) Valve protection requirements.

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

(3) Pneumatically-actuated [~~Pneumatically-operated~~] ESV, internal valves, and API 607 ball valves shall be equipped for automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet (1.5 meters) of the ESV, internal valves, and/or API 607 ball valves. Temperature sensitive elements shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) (No change.)

(5) Pneumatically-actuated [~~Pneumatically-operated~~] internal valves, ESV, and API 607 ball valves shall be interconnected and incorporated into at least one remote operating system.

(c) (No change.)

(d) Existing installations which have horizontal bulkheads and cable-actuated ESV shall comply with the following:

(1) (No change.)

(2) If a cable-actuated ESV requires replacement, it shall be replaced with a pneumatically-actuated [~~pneumatically-operated~~] ESV;

(3) If the horizontal bulkhead or a backflow check valve or a cable-actuated ESV are moved from their original location to another location, no matter what the distance from the original location, then the installation shall comply with the requirements for a vertical bulkhead and pneumatically-actuated [~~pneumatically-operated~~] ESV;

(4) All cable-actuated ESV shall be replaced with pneumatically-actuated [~~pneumatically-operated~~] ESV by January 1, 2011.

(e) - (g) (No change.)

(h) If necessary to increase LP-gas safety, AFS may require a pneumatically-actuated [~~pneumatically-operated~~] internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 inch or one inch in size.

(i) (No change.)

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

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



SUBCHAPTER C. VEHICLES

16 TAC §9.202, §9.211

The Commission proposes the amendments under Natural Resources Code sections 113.087 and 113.088, amended by Senate Bill 1582 (87th Legislature, Regular Session), and Natural Resources Code section 113.0955, added by Senate Bill 1668 (87th Legislature, Regular Session). The Commission also proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.087, 113.088 and 113.0955.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.202. *Registration and Transfer of LP-Gas Transports or Container Delivery Units.*

(a) A person who operates a transport equipped with LP-gas cargo tanks or any container delivery unit, regardless of who owns the transport or unit, shall register such transport or unit with AFS in the name or names under which the operator conducts business in Texas prior to the unit being used in LP-gas service.

(1) To register a cargo tank unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to AFS the \$270 registration fee for each bobtail truck, semitrailer, ~~[container delivery unit]~~ or other motor vehicle equipped with LP-gas cargo tanks;

(B) file a properly completed LPG Form 7;

(C) file a copy of the Manufacturer's Data Report;

(D) file a copy of the DOT Certificate of Compliance;

and

(E) file a copy of the hydrostatic or pneumatic test required by §9.208 of this title (relating to Testing Requirements), unless the unit was manufactured within the previous five years or 10 years for units which meet the exemption in 49 CFR 180.407(c).

(2) To register a container delivery unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to AFS the \$270 registration fee for each container delivery unit; and

(B) file a properly completed LPG Form 7A.

(3) [(2)] To register a bobtail truck, semitrailer, container delivery unit, or other motor vehicle equipped with LP-gas cargo tanks [an MC-330/MC-331 specification unit] which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to AFS the \$270 registration fee;

(B) file a properly completed LPG Form 7 for cargo tanks or LPG Form 7A for container delivery units; and

(C) for cargo tanks, file a copy of the latest test results if an expired unit has not been used in the transportation of LP-gas for over one year or if a current hydrostatic test has not been filed with AFS.

(4) [(3)] To re-register a currently registered unit, the licensee operating the unit shall pay a \$270 annual registration fee.

(5) [(4)] To transfer a currently registered unit, the new operator of the unit shall:

(A) pay the \$100 transfer fee for each unit; and

(B) file a properly completed LPG Form 7T [7].

(b) - (c) (No change.)

§9.211. *Markings.*

(a) In addition to NFPA 58 §9.4.6.2, each LP-gas transport and container delivery unit in LP-gas service shall be marked on each side and the rear with the name of the licensee or the ultimate consumer operating the unit. Such lettering shall be legible and at least two inches in height and in sharp color contrast to the background. AFS shall determine whether the name marked on the unit is sufficient to properly identify the licensee or ultimate consumer operating the unit.

(b) In addition to NFPA 58 §12.5.13(2), the location of the manual shutoff valve on each school bus, special transit vehicle, mass transit vehicle, and public transportation unit shall be marked "Manual Shutoff Valve." Decals or stencils are acceptable.

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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Haley Cochran

Rules Attorney, Office of General Counsel

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §9.403

The Commission proposes the amendments under Natural Resources Code sections 113.087 and 113.088, amended by Senate Bill 1582 (87th Legislature, Regular Session), and Natural Resources Code section 113.0955, added by Senate Bill 1668 (87th Legislature, Regular Session). The Commission also proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or

phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.087, 113.088 and 113.0955.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.403. Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules.

Figure: 16 TAC §9.403(a)

[Figure: 16 TAC §9.403(a)]

(b) (No change.)

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

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Haley Cochran

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) proposes an amendment to §61.1011, concerning the formula transition grant. The proposed amendment would extend certain provisions related to the average daily attendance (ADA) hold harmless to the 2020-2021 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed amendment to §61.1011 would update subsection (c)(4) regarding ADA. The change would extend to the 2020-2021 school year the provision that allows exclusion of any reduction in ADA arising from the application of Elementary and Secondary School Emergency Relief (ESSER) funding toward the ADA hold harmless.

The proposed amendment would also remove language providing alternative provisions between the 2019-2020 and the 2020-2021 school years.

Subsection (c)(7) would be amended to update the term "students with limited English proficiency" to "emergent bilingual students" in alignment with Senate Bill 2066, 87th Texas Legislature, Regular Session, 2021.

New subsection (c)(14) would be added to exclude school district entitlements for certain students under Texas Education Code (TEC), §48.281, in calculations for the formula transition grant.

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 beyond what the authorizing statute requires.

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 allowing consideration of the ADA hold harmless provisions adopted in response to the COVID-19 pandemic for the 2020-2021 school years.

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 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: 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 adjustment of the calculation of ADA funding in the 2020-2021 school year by excluding any reduction in ADA arising from the application of ESSER funding toward the ADA hold harmless. There is no anticipated economic cost to persons who are required to comply with the proposal. 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 new 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 May 20, 2022, and ends June 20, 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 May 20, 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 (TEC), §48.004, which specifies that the commissioner of education shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.277, which details the calculation of the formula transition grant for school districts and open-enrollment charter schools. This grant is provided to eligible school districts and open-enrollment charter schools on the basis of a comparison of funding under House Bill 3, 86th Texas Legislature, 2019, and funding under prior law.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.277.

§61.1011. Formula Transition Grant.

(a) General provisions. This section implements Texas Education Code (TEC), §48.277 (Formula Transition Grant), which provides for additional funding for school districts with new funding levels that did not exceed certain thresholds as a result of the passage of House Bill (HB) 3, 86th Texas Legislature, 2019. In accordance with TEC, §48.277, this section defines the data sources that Texas Education Agency (TEA) will use in calculating the prior law funding available to school districts.

(b) Definitions. The following terms have the following meanings when used in this section.

(1) Average daily attendance (ADA)--Average daily attendance as defined by TEC, §48.005(a).

(2) Foundation School Program (FSP)--The program established under TEC, Chapters 46, 48, and 49, or any successor program of state-appropriated funding for school districts in this state.

(3) Local maintenance and operations (M&O) tax collections--The amount of local M&O taxes collected by a school district.

(4) Maintenance and operations revenue--The total M&O revenue available to a school district for maintenance and operations under the FSP, including state aid and M&O tax collections net of any required recapture payments.

(5) Public Education Information Management System (PEIMS)--The system that encompasses all data requested and received by TEA about public education, also known as the Texas Student Data System (TSDS) or TSDS PEIMS.

(c) Data sources for calculating M&O revenue under TEC, Chapters 41 and 42, as those chapters existed on January 1, 2019.

(1) M&O tax rate. TEA will use a district's tax year 2018 adopted M&O tax rate, minus any pennies of tax effort adopted in response to a disaster under Texas Tax Code, §26.08(a-1).

(2) M&O tax collections. For the 2019-2020 and 2020-2021 school years, the M&O tax collections under prior law are equal to the product of:

(A) the quotient of:

(i) the actual M&O tax collections for the school year submitted to TEA for FSP purposes; and

(ii) the actual adopted M&O tax rate for the school year; and

(B) the adopted M&O tax rate for the 2018 tax year.

(3) Total tax levy. For purposes of calculating a district's support of students enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf under TEC, §30.003, TEA will calculate the total tax levy by adding the district's interest and sinking (I&S) tax collections to the M&O tax collections calculated in paragraph (2) of this subsection.

(4) Average daily attendance. In calculating the ADA of a school district under former TEC, §42.005, TEA will exclude any attendance submitted to TEA under TEC, §48.0051 (Incentive for Additional Instructional Days). [~~and:~~]

~~[(A) For [for] the 2019-2020 and 2020-2021 school years [year], the calculation of ADA of a school district under former TEC, §42.005, will include adjustments related to the ADA hold harmless provided for that school year but will exclude any reduction in ADA arising from the application of the Elementary and Secondary School Emergency Relief funding toward the ADA hold harmless. [~~and:~~]~~

~~[(B) for the 2020-2021 school year, the calculation of ADA of a school district under former TEC, §42.005, will include adjustments related to the ADA hold harmless provided for that school year.]~~

(5) State compensatory education full-time equivalent (FTE) student counts. To calculate the number of students eligible for the compensatory education allotment under former TEC, §42.152, TEA will continue to average the best six months number of students eligible for enrollment in the National School Lunch Program from the preceding federal fiscal year submitted to TEA from the Texas Department of Agriculture. Districts that used alternative reporting of these students through the FSP will be able to continue to submit alternative reporting data through the FSP system for purposes of calculating prior law revenue under the formula transition grant.

(6) Career and technical education (CTE) FTE student counts. To calculate the number of student FTEs eligible for the career and technology education allotment under former TEC, §42.153, TEA will use CTE FTEs submitted to TEA in the summer PEIMS submission for each year and exclude any CTE FTEs in Grade 7 or 8 that were authorized for FSP funding starting with the 2019-2020 school year under TEC, §48.106 (Career and Technology Education Allotment). TEA will also exclude any new CTE funding related to Pathways in Technology Early College High School (P-TECH) schools and the New Tech Network.

(7) Bilingual education. To calculate the bilingual education allotment under former TEC, §42.153, TEA will use data submitted to PEIMS for emergent bilingual students [~~with limited English proficiency~~] in bilingual or special language programs under TEC, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).

(8) High school allotment. To calculate the high school allotment under former TEC, §42.260, TEA will continue to use PEIMS ADA for students in Grades 9-12.

(9) Staff salary allotment. To calculate the additional state aid for staff salary increases under former TEC, §42.2513, TEA will use the numbers of full-time and part-time employees other than adminis-

trators or employees subject to the minimum salary schedule submitted to TEA through the FSP system for the 2018-2019 school year.

(10) Additional state aid for homestead exemption. To calculate the additional state aid for homestead exemption under former TEC, §42.2518, TEA will use the values calculated for districts for the 2018-2019 school year.

(11) Guaranteed yield. To calculate the guaranteed yield allotment under former TEC, §42.302(a-1)(1), TEA will use the amounts per student in weighted average daily attendance (WADA) per penny of tax effort established in the General Appropriations Act, Rider 3, Article III, 86th Texas Legislature, 2019, of \$126.88 for the 2019-2020 school year and \$135.92 for the 2020-2021 school year.

(12) Chapter 41 status. For purposes of determining a district's status under former TEC, Chapter 41, TEA will calculate districts' recapture costs under the law as it existed on January 1, 2019, by assuming all districts with a final wealth per WADA in excess of the equalized wealth level(s) were notified of the requirement to pay recapture and that all districts would have exercised the option to purchase ADA credits under former TEC, Chapter 41, Subchapter D. TEA will further assume that all affected districts would have qualified for the early agreement credit as it existed under former TEC, §41.098.

(13) School district entitlement for certain students. TEA will exclude calculations of state aid under former TEC, §42.2511, and TEC, §48.252 (School District Entitlement for Certain Students) in calculations for the formula transition grant.

(14) Maintenance of effort and equity for federal money related to Covid-19 pandemic. TEA will exclude increases in entitlements under TEC, §48.281 (Maintenance of Effort and Equity for Federal Money Related to Covid-19 Pandemic) in calculations for the formula transition grant.

(15) [(14)] Limitation on old law calculations.

(A) TEA will stop running prior law calculations for the 2019-2020 school year after June 30, 2021, and the amounts that a district would have received for the 2019-2020 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.

(B) TEA will stop running prior law calculations for the 2020-2021 school year after June 30, 2022, and the amounts that a district would have received for the 2020-2021 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.5, 153.8, 153.9, 153.11, 153.15, 153.17, 153.20 - 153.24, 153.26, 153.28, 153.40

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §§153.1, Definitions; 153.5, Fees; 153.8, Scope of Practice; 153.9, Applications; 153.11, Examinations; 153.15, Experience Required for Licensing; 153.17, License Renewal; 153.20, Guidelines for Revocation, Suspension, Denial of License; Probationary License; 153.21, Appraiser Trainees and Supervisory Appraisers; 153.22, Voluntary Appraiser Trainee Experience Reviews; 153.23, Inactive Status; 153.24, Complaint Processing; 153.26, Identity Theft; 153.28, Peer Investigative Committee Review; and 153.40, Approval of Continuing Education Providers and Courses. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments to §153.1 move a definition from §153.40, align the language more closely with Appraisal Qualifications Board (AQB) definitions, and add a definition for the recently AQB adopted PAREA program. The proposed amendments to §153.5 remove outdated fees, clarify the applicability of application fees to reinstatements, increase the fee for voluntary experience reviews, and clarify the applicability of online convenience fee required by the Department of Information Resources.

The proposed amendment to §153.11 provides the examination provider additional discretion in determining the method of accommodation.

The proposed amendments to §153.15 consolidate redundant requirements for new applicants and existing license holders seeking to upgrade their license, add references to the PAREA program and instruct how this experience may be submitted to TALCB, and outline contingent approval may be granted upon completion of additional education, experience, or mentorship.

The proposed amendments to §153.17 remove sections now obsolete since the implementation of an online submission system.

The proposed amendments to §153.20 clarify the guidelines apply to disciplinary action and are not limited to revocation and suspension, remove a redundant section, and reflect changes to TALCB division names.

The proposed amendments to §153.21 alter the progress monitoring program required of supervisory appraisers with 4-5 trainees, in accordance with AQB Criteria. Trainees of supervisory appraisers that fall into this category no longer are required to submit their work product for review as specified in §153.22. TALCB will require the applicable supervisory appraisers to submit a progress monitoring plan for his or her trainees and keep progress monitoring reports subject to TALCB inspection for a specified period of time. The amendments also update references to distance education in accordance with updates to the AQB's Criteria.

The proposed amendments to §153.22 clarify that an interested applicant, not just trainees, may apply for an appraiser experience review.

The proposed amendment to §153.23 removes a reference to an outdated fee. The proposed amendments to §153.24 reflect changes to TALCB division names, remove references to former processes, and provide for the Commissioner to designate to sign an agreed resolution on his or her behalf. The proposed amendments to §153.26 reflect renumbered sections in §153.20.

In §153.28, the proposed amendments further reflect current investigative process.

The proposed amendments to §153.40 remove redundant definitions, and those moved to §153.1 remove surplus fee information and references to outdated processes.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rules' applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments are Chapter 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.1. Definitions.

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

- (1) ACE--Appraiser Continuing Education.
- (2) Act--The Texas Appraiser Licensing and Certification Act.
- (3) Administrative Law Judge--A judge employed by the State Office of Administrative Hearings (SOAH).
- (4) Analysis--The act or process of providing information, recommendations or conclusions on diversified problems in real estate other than estimating value.
- (5) Applicant--A person seeking a certification, license, approval as an appraiser trainee, or registration as a temporary out-of-state appraiser from the Board.
- (6) Appraisal practice--Valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review.
- (7) Appraisal report--A report as defined by and prepared under the USPAP.
- (8) Appraisal Standards Board--The Appraisal Standards Board (ASB) of the Appraisal Foundation, or its successor.
- (9) Appraisal Subcommittee--The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council or its successor.
- (10) Appraiser Qualifications Board--The Appraiser Qualifications Board (AQB) of the Appraisal Foundation, or its successor.
- (11) Appraiser trainee--A person approved by the Board to perform appraisals or appraiser services under the active, personal and diligent supervision and direction of the supervisory appraiser.
- (12) Board--The Texas Appraiser Licensing and Certification Board.
- (13) Certified General Appraiser--A certified appraiser who is authorized to appraise all types of real property.
- (14) Certified Residential Appraiser--A certified appraiser who is authorized to appraise one-to-four unit residential properties without regard to value or complexity.
- (15) Classroom course--A course in which the instructor and students interact face to face, in real time and in the same physical location.
- (16) [(15)] Classroom hour--Fifty minutes of instruction out of each sixty-minute segment of actual classroom session time.
- (17) [(16)] Client--Any party for whom an appraiser performs an assignment.
- (18) [(17)] College--Junior or community college, senior college, university, or any other postsecondary educational institution established by the Texas Legislature, which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or is a candidate for such accreditation.
- (19) [(18)] Commissioner--The commissioner of the Texas Appraiser Licensing and Certification Board.

(20) [(19)] Complainant--Any person who has made a written complaint to the Board against any person subject to the jurisdiction of the Board.

(21) [(20)] Complex appraisal--An appraisal in which the property to be appraised, the form of ownership, market conditions, or any combination thereof are atypical.

(22) [(21)] Continuing education cycle--the period in which a license holder must complete continuing education as required by the AQB.

(23) [(22)] Council--The Federal Financial Institutions Examination Council (FFIEC) or its successor.

(24) [(23)] Day--A calendar day unless clearly indicated otherwise.

(25) [(24)] Distance education--Any educational process based on the geographical separation of student and instructor, as defined by the AQB. Distance education includes synchronous delivery, when the instructor and student interact simultaneously online; asynchronous delivery, when the instructor and student interaction is non-simultaneous; and hybrid or blended course delivery that allows for both in-person and online interaction, either synchronous or asynchronous. [that provides a reciprocal environment where the student has verbal or written communication with an instructor].

(26) [(25)] Feasibility analysis--A study of the cost-benefit relationship of an economic endeavor.

(27) [(26)] Federal financial institution regulatory agency--The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successors of any of those agencies.

(28) [(27)] Federally related transaction--Any real estate-related transaction that requires the services of an appraiser and that is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

(29) [(28)] Foundation--The Appraisal Foundation (TAF) or its successor.

[(29) Fundamental real estate appraisal course--Those courses approved by the Appraiser Qualifications Board as qualifying education.]

(30) Inactive certificate or license--A general certification, residential certification, or state license which has been placed on inactive status by the Board.

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

(32) License holder--A person certified, licensed, approved, authorized or registered by the Board under the Texas Appraiser Licensing and Certification Act.

(33) Licensed Residential Appraiser--A licensed appraiser who is authorized to appraise non-complex one-to-four residential units having a transaction value less than \$1 million and complex one-to-four residential units having a transaction value less than \$400,000 [\$250,000].

(34) Licensing--Includes the Board processes respecting the granting, disapproval, denial, renewal, certification, revocation, suspension, annulment, withdrawal or amendment of a license.

(35) Market analysis--A study of market conditions for a specific type of property.

(36) Nonresidential real estate appraisal course--A course with emphasis on the appraisal of nonresidential real estate properties which include, but are not limited to, income capitalization, income property, commercial appraisal, rural appraisal, agricultural property appraisal, discounted cash flow analysis, subdivision analysis and valuation, or other courses specifically determined by the Board.

(37) Nonresidential property--A property which does not conform to the definition of residential property.

(38) Party--The Board and each person or other entity named or admitted as a party.

(39) Person--Any individual, partnership, corporation, or other legal entity.

(40) Personal property--Identifiable tangible objects and chattels that are considered by the general public as being "personal," for example, furnishings, artwork, antiques, gems and jewelry collectibles, machinery and equipment; all tangible property that is not classified as real estate.

(41) Petitioner--The person or other entity seeking an advisory ruling, the person petitioning for the adoption of a rule, or the party seeking affirmative relief in a proceeding before the Board.

(42) Pleading--A written document, submitted by a party or a person seeking to participate in a case as a party, that requests procedural or substantive relief, makes claims, alleges facts, makes a legal argument, or otherwise addresses matters involved in the case.

(43) Practical Applications of Real Estate Appraisal (PAREA)--Training Programs approved by the AQB that utilize simulated experience training and serve as an alternative to the traditional Supervisor/Trainee experience model.

(44) Qualifying real estate appraisal course--Those courses approved by the Appraiser Qualifications Board as qualifying education.

(45) [(43)] Real estate--An identified parcel or tract of land, including improvements, if any.

(46) [(44)] Real estate appraisal experience--Valuation services performed as an appraiser or appraiser trainee by the person claiming experience credit. Significant real property appraisal experience requires active participation; mere observation of another appraiser's work is not real estate appraisal experience.

(47) [(45)] Real estate-related financial transaction--Any transaction involving: the sale, lease, purchase, investment in, or exchange of real property, including an interest in property or the financing of property; the financing of real property or an interest in real property; or the use of real property or an interest in real property as security for a loan or investment including a mortgage-backed security.

(48) [(46)] Real property--The interests, benefits, and rights inherent in the ownership of real estate.

(49) [(47)] Record--All notices, pleadings, motions and intermediate orders; questions and offers of proof; objections and rulings on them; any decision, opinion or report by the Board; and all staff memoranda submitted to or considered by the Board.

(50) [(48)] Report--Any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

(51) [(49)] Residential property--Property that consists of at least one but not more than four residential units.

(52) [(50)] Respondent--Any person subject to the jurisdiction of the Board, licensed or unlicensed, against whom any complaint has been made.

(53) [(51)] Supervisory Appraiser--A certified general or residential appraiser who is designated as a supervisory appraiser, as defined by the AQB, for an appraiser trainee. The supervisory appraiser is responsible for providing active, personal and diligent supervision and direction of the appraiser trainee.

(54) [(52)] Trade Association--A nonprofit voluntary member association or organization:

(A) whose membership consists primarily of persons who are licensed as appraisers and pay membership dues to the association or organization;

(B) that is governed by a board of directors elected by the members; and

(C) that subscribes to a written code of professional conduct or ethics.

(55) [(53)] USPAP--Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

(56) [(54)] Workfile--Documentation necessary to support an appraiser's analysis, opinions, and conclusions, and in compliance with the record keeping provisions of USPAP.

§153.5. Fees.

(a) The Board shall charge and the Commissioner shall collect the following fees:

[(1) Effective January 1, 2020:]

[(A) a fee of \$460 for an application for or timely renewal of a certified general appraiser license;]

[(B) a fee of \$385 for an application for or timely renewal of a certified residential appraiser license;]

[(C) a fee of \$345 for an application for or timely renewal of a licensed residential appraiser license; and]

[(D) a fee of \$250 for an application for or timely renewal of an appraiser trainee license;

(1) [(2)] Effective January 1, 2022:

(A) a fee of \$560 for an application, reinstatement, [~~for~~] or timely renewal of a certified general appraiser license;

(B) a fee of \$460 for an application, reinstatement, [~~for~~] or timely renewal of a certified residential appraiser license;

(C) a fee of \$400 for an application, reinstatement, [~~for~~] or timely renewal of a licensed residential appraiser license; and

(D) a fee of \$250 for an application, reinstatement, [~~for~~] or timely renewal of an appraiser trainee license;

(2) [(3)] a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(3) [(4)] a fee equal to two times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(4) [(5)] a fee of \$250 for nonresident license;

(5) [(6)] the national registry fee in the amount charged by the Appraisal Subcommittee;

(6) [(7)] an application fee for licensure by reciprocity in the same amount as the fee charged for a similar license issued to a Texas resident;

(7) [(8)] a fee of \$200 for an extension of time to complete required continuing education;

(8) [(9)] a fee of \$50 to request a return to active status;

(9) [(10)] a fee of \$50 for evaluation of an applicant's fitness;

(10) [(11)] an examination fee as provided in the Board's current examination administration agreement;

(11) [(12)] a fee of \$100 [\$75] to request a voluntary appraiser [~~trainee~~] experience review;

(12) [(13)] the fee charged by the Federal Bureau of Investigation, the Texas Department of Public Safety or other authorized entity for fingerprinting or other service for a national or state criminal history check in connection with a license application;

(13) [(14)] a base fee of \$50 for approval of an ACE course;

(14) [(15)] a content review fee of \$5 per classroom hour for approval of an ACE course;

(15) [(16)] a course approval fee of \$50 for approval of an ACE course currently approved by the AQB or another state appraiser regulatory agency;

(16) [(17)] a one-time offering course approval fee of \$25 for approval of a 2-hour ACE course to be offered in-person only one time;

(17) [(18)] a fee of \$200 for an application for an ACE provider approval or subsequent approval; and

(18) [(19)] any fee required by the Department of Information Resources for establishing and maintaining online applications or as a subscription or convenience fee for use of an online payment system.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a payment that has been dishonored, and who have not made good on that payment within 30 days, for whatever reason, must submit all replacement fees in the form of a cashier's check, money order, or online credit card payment.

(c) Licensing fees are waived for members of the Board staff who must maintain a license for employment with the Board only and are not also using the license for outside employment.

§153.8. Scope of Practice.

(a) License holders are bound by the USPAP edition in effect at the time of the appraisal.

(b) Certified General Real Estate Appraisers may appraise all types of real property without regard to transaction value or complexity.

(c) Certified Residential Real Estate Appraisers:

(1) may appraise one-to-four residential units without regard to transaction value or complexity;

(2) may appraise vacant or unimproved land for which the highest and best use is for one-to-four family purposes;

(3) may not appraise subdivisions; and

(4) may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties.

(d) State Licensed Real Estate Appraisers:

(1) may appraise non-complex one-to-four residential units having a transaction value less than \$1 million and complex one-to-four residential units having a transaction value less than \$400,000;

(2) may appraise vacant or unimproved land for which the highest and best use is for one-to-four [~~one to four~~] unit residential purposes;

(3) may not appraise subdivisions; and

(4) may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties.

(e) Appraiser Trainees may appraise those properties, under the active, personal and diligent supervision of their sponsoring appraiser, which the sponsoring appraiser is permitted to appraise.

(f) If an appraiser or appraiser trainee is a person with a disability (as defined in the Americans with Disabilities Act or regulations promulgated thereunder), an unlicensed assistant may perform certain services normally requiring a license for or on behalf of the appraiser or appraiser trainee, provided that:

(1) the services performed by the assistant do not include appraisal analysis;

(2) the assistant only provides such services as would constitute a reasonable accommodation;

(3) the assistant is under the direct control of the appraiser or appraiser trainee;

(4) the appraiser or appraiser trainee is as close in physical proximity as is practical to the activity;

(5) the assistant is not represented as being or having the authority to act as an appraiser or appraiser trainee; and

(6) if the assistant provides significant assistance, the appraisal report includes the name of the assistant.

§153.9. Applications.

(a) A person desiring to be licensed as an appraiser or appraiser trainee shall file an application using forms prescribed by the Board or the Board's online application system, if available. The Board may decline to accept for filing an application that is materially incomplete or that is not accompanied by the appropriate fee. Except as provided by the Act, the Board may not grant a license to an applicant who has not:

(1) paid the required fees;

(2) submitted a complete and legible set of fingerprints as required in §153.12 of this title (relating to Criminal History Checks);

(3) satisfied any experience and education requirements established by the Act, Board rules, and the AQB;

(4) successfully completed any qualifying examination prescribed by the Board;

(5) provided all supporting documentation or information requested by the Board in connection with the application;

(6) satisfied all unresolved enforcement matters and requirements with the Board; and

(7) met any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) Termination of application. An application is [~~void and~~] subject to no further evaluation or processing if within one year from the date an application is filed, an applicant fails to satisfy:

(1) a current education, experience or exam requirement; or

(2) the fingerprint and criminal history check requirements in §153.12 of this title.

(c) A license is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to License Renewal).

(d) The Board may deny a license to an applicant who fails to satisfy the Board as to the applicant's honesty, trustworthiness, and integrity.

(e) The Board may deny a license to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(f) When an application is denied by the Board, no subsequent application will be accepted within two years after the date of the Board's notice of denial as required in §157.7 of this title (Denial of a License, Renewal or Reinstatement; Adverse Action Against a License Holder).

(g) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(h) This subsection applies to an applicant who is a military service member, veteran, or military spouse.

(1) The Board will process an application under this subsection on an expedited basis.

(2) If an applicant under this subsection holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license issued in this state, the Board will:

(A) Waive the license application and examination fees; and

(B) Issue the license as soon as practicable after receipt of the application.

(3) The Board may reinstate a license previously held by an applicant, if the applicant satisfies the requirements in §153.16 of this chapter (relating to License Reinstatement).

(4) The Board may allow an applicant to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Board. For purposes of this subsection, the standard method of demonstrating competency is the

specific examination, education, and/or experience required to obtain a particular license.

(5) In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

- (A) education;
- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the commissioner.

(i) This subsection applies to an applicant who is a military service member or veteran.

(1) The Board will waive the license application and examination fees for an applicant under this subsection whose military service, training or education substantially meets all of the requirements for a license.

(2) The Board will credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(3) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(4) The applicant must pass the qualifying examination, if any, for the type of license sought.

(5) The Board will evaluate applications filed under this subsection consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.

(j) This subsection applies to an applicant who is a military spouse. The Board will waive the license application fee and issue a license by reciprocity to an applicant who wants to practice in Texas in accordance with 55.0041, Occupations Code, if:

(1) the applicant submits:

(A) an application to practice in Texas on a form approved by the Board;

(B) proof of the applicant's Texas residency; and

(C) a copy of the applicant's military identification card;

and

(2) the Board verifies that the military spouse is currently licensed and in good standing with the other state or jurisdiction.

(k) Except as otherwise provided in this section, a person applying for license under subsection (h), (i) or (j) of this section must also:

(1) submit the Board's approved application form for the type of license sought;

(2) pay the required fee for that application; and

(3) submit the supplemental form approved by the Board applicable to subsection (h), (i) or (j) of this section.

(l) The commissioner may waive any prerequisite to obtaining a license for an applicant as allowed by the AQB.

§153.11. Examinations.

(a) Administration of Licensing Examinations.

(1) An examination required for any license issued by the Board will be conducted by the testing service with which the Board has contracted for the administration of examinations.

(A) The testing service shall schedule and conduct the examinations in the manner required by the contract between the Board and the testing service.

(B) Examinations shall be administered at locations designated by the exam administrator.

(C) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange an accommodation. The testing service shall determine the method of accommodation [examination, whether oral or written,] based on the particular circumstances of each case.

(2) Each examination shall be consistent with the examination criteria and examination content outline of the AQB for the category of license sought. To become licensed, an applicant must achieve a passing score acceptable to the AQB on the examination.

(3) Successful completion of the examination is valid for a period of 24 months.

(4) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the Board that the applicant has completed 15 additional hours of qualifying education after the date the applicant failed the examination for the third time.

(b) Examination Fees.

(1) The examination fee must be paid each time the examination is taken.

(2) An applicant who is registered for an examination and fails to attend shall forfeit the examination fee.

(c) Exam Admission.

(1) To be admitted to an examination, applicants must present the following documents:

(A) exam registration paperwork as required by the testing service under contract with the Board; and

(B) official photo-bearing personal identification.

(2) The testing service shall deny entrance to the examination to any person who cannot provide adequate identification.

(3) The testing service may refuse to admit an applicant who arrives after the time the examination is scheduled to begin or whose conduct or demeanor would be disruptive to other persons taking examinations at the testing location.

(d) Confidentiality of Examination.

(1) The testing service may confiscate examination materials, dismiss an applicant, and fail the applicant for violating or attempting to violate the confidentiality of the contents of an examination.

(2) No credit shall be given to applicants who are dismissed from an examination, and dismissal may result in denial of an application.

(3) The Board, or the testing service under contract with the Board, may file theft charges against any person who removes or

attempts to remove an examination or any portion thereof or any written material furnished with the examination whether by actual physical removal or by transcription.

(4) The Board may deny, suspend, or revoke a license for disclosing to another person the content of any portion of an examination.

§153.15. Experience Required for Licensing.

(a) Applicants for a license must meet all experience requirements established by the AQB.

(b) The Board awards experience credit in accordance with current criteria established by the AQB and in accordance with the provisions of the Act specifically relating to experience requirements. An hour of experience means 60 minutes expended in one or more of the acceptable appraisal experience areas. Calculation of the hours of experience is based solely on actual hours of experience. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience. Any one or a [any] combination of the following categories may be acceptable for satisfying the applicable experience requirement[. Experience credit may be awarded for]:

(1) An appraisal or appraisal analysis when performed in accordance with Standards 1 and 2 and other provisions of the USPAP edition in effect at the time of the appraisal or appraisal analysis.

(2) Mass appraisal, including ad valorem tax appraisal that:

(A) conforms to USPAP Standards 5 and 6; and

(B) demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

(3) Appraisal review that:

(A) conforms to USPAP Standards 3 and 4; and

(B) demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

(4) Appraisal consulting services, including market analysis, cash flow and/or investment analysis, highest and best use analysis, and feasibility analysis when it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standards 1 and 2 and using appropriate methods and techniques applicable to appraisal consulting.

(5) "Practical Applications of Real Estate Appraisal" (PAREA) programs approved by the AQB.

(c) Experience credit may not be awarded for teaching appraisal courses.

~~[(d) Recency of Experience.]~~

~~[(1) The Appraisal Experience Log submitted by an applicant must include a minimum of 10 appraisal reports representing at least 10 percent of the hours and property type of experience required for each license category and for which an applicant seeks experience credit that have been performed within 5 years before the date an application is accepted for filing by the Board.]~~

~~[(2) This requirement does not eliminate an applicant's responsibility to comply with the 5-year records retention requirement in USPAP.]~~

(d) [(e)] Public Information Act. All information and documentation submitted to the Board in support of an application for license or application to upgrade an existing license, including an applicant's experience log, experience affidavit, copies of appraisals and

work files, may be subject to disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless an exception to disclosure applies.

(e) Applicants claiming experience credit under subsection (b)(1) - (4) must submit a Board-approved Appraisal Experience Log that lists each appraisal assignment or other work for which the applicant is seeking credit and an Appraisal Experience Affidavit.

(1) The Experience Log must include:

(A) the full amount of experience hours required for the license type sought, as required by the AQB;

(B) the required number of hours of experience required for each property type as required by the AQB; and

(C) the minimum length of time over which the experience is claimed, as required by the AQB.

(2) The Experience Log must also include Recent Experience.

(A) The Log must include a minimum of 10 appraisal reports representing at least 10 percent of the hours and property type of experience required for each license category and for which an applicant seeks experience credit that have been performed within 5 years before the date an application is accepted for filing by the Board.

(B) This requirement does not eliminate an applicant's responsibility to comply with the 5-year records retention requirement in USPAP.

~~(f) [Experience credit for first-time applicants. Each applicant must submit a Board-approved Appraisal Experience Log and Appraisal Experience Affidavit listing each appraisal assignment or other work for which the applicant is seeking experience credit.] The Board may grant experience credit for work listed on an applicant's Appraisal Experience Log that:~~

~~(1) complies with the USPAP edition in effect at the time of the appraisal;~~

~~(2) is verifiable and supported by:~~

~~(A) work files in which the applicant is identified as participating in the appraisal process; or~~

~~(B) appraisal reports that:~~

~~(i) name the applicant in the certification as providing significant real property appraisal assistance; or~~

~~(ii) the applicant has signed;~~

~~(3) was performed when the applicant had legal authority to do so; and~~

~~(4) complies with the acceptable categories of experience established by the AQB and stated in subsection (b) of this section.~~

(g) Consistent with this chapter, upon review of the applicant's real estate appraisal experience, the Board may grant a license or certification contingent upon completion of additional education, experience or mentorship.

~~[(g) Experience credit for current licensed residential or certified residential license holders who seek to upgrade their license.]~~

~~[(1) Applicants who currently hold a licensed residential or certified residential appraiser license issued by the Board and want to upgrade this license must:]~~

~~[(A) submit an application on a Board-approved form;]~~

~~[(B) submit a Board-approved Appraisal Experience Log and Appraisal Experience Affidavit listing each appraisal assignment or other work for which the applicant is seeking experience credit for the full amount of experience hours required for the license sought;]~~

~~[(C) pay the required application fee; and]~~

~~[(D) satisfy any other requirement for the license sought, including but not limited to:]~~

~~[(i) the incremental number of experience hours required;]~~

~~[(ii) the hours of experience required for each property type;]~~

~~[(iii) the minimum length of time over which the experience is claimed; and]~~

~~[(iv) the recency requirement in this section.]~~

~~[(2) Review of experience logs.]~~

~~[(A) An applicant who seeks to upgrade a current license issued by the Board must produce experience logs to document 100 percent of the experience hours required for the license sought.]~~

~~[(B) Upon review of an applicant's experience logs, the Board may, at its sole discretion, grant experience credit for the hours shown on the applicant's logs even if some work files have been destroyed because the 5-year records retention period in USPAP has passed.]~~

~~[(h) Upon review of an applicant's Appraisal Experience Log, the Board may, at its sole discretion, grant experience credit for the hours shown on an applicant's log even if some work files have been destroyed because of the 5-year records retention period in USPAP has passed.]~~

~~[(i) The Board may grant experience credit for applicants claiming experience credit under subsection (b)(5) that submit a valid certificate of completion from an AQB approved PAREA program.]~~

~~[(j) [(h)] The Board may, at its sole discretion, accept evidence other than an applicant's Appraisal Experience Log and Appraisal Experience Affidavit to demonstrate experience claimed by an applicant.]~~

~~[(k) [(i)] The Board must verify the experience claimed by each applicant generally complies with USPAP.]~~

~~(1) Verification may be obtained by:~~

~~(A) requesting copies of appraisals and all supporting documentation, including the work files; and~~

~~(B) engaging in other investigative research determined to be appropriate by the Board.~~

~~(2) If the Board requests documentation from an applicant to verify experience claimed by an applicant, the applicant has 60 days to provide the requested documentation to the Board.~~

~~(A) In response to an initial request for documentation to verify experience, an applicant must submit a copy of the relevant appraisals, but is not required to submit the associated work files at that time.~~

~~(B) If in the course of reviewing the submitted appraisals, the Board determines additional documentation is necessary to verify general compliance with USPAP, the Board may make additional requests for supporting documentation.~~

~~(3) Experience involved in pending litigation.~~

(A) The Board will not request work files from an applicant to verify claimed experience if the appraisal assignments are identified on the experience log submitted to the Board as being involved in pending litigation.

(B) If all appraisal assignments listed on an applicant's experience log are identified as being involved in pending litigation, the Board may audit any of the appraisal assignments on the applicant's experience log, regardless of litigation status, with the written consent of the applicant and the applicant's supervisory appraiser.

(4) Failure to comply with a request for documentation to verify experience, or submission of experience that is found not to comply with the requirements for experience credit, may result in denial of a license application.

(5) A license holder who applies to upgrade an existing license and submits experience that does not comply with USPAP may also be subject to disciplinary action up to and including revocation.

(l) [(j)] Unless prohibited by Tex. Occ. Code §1103.460, applicable confidentiality statutes, privacy laws, or other legal requirements, or in matters involving alleged fraud, Board staff shall use reasonable means to inform supervisory appraisers of Board communications with their respective trainees.

§153.17. License Renewal.

(a) General Provisions.

(1) The Board will send a renewal notice to the license holder at least 90 days prior to the expiration of the license. It is the responsibility of the license holder to apply for renewal in accordance with this chapter, and failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.

(2) A license holder renews the license by timely filing an application for renewal, paying the appropriate fees to the Board, and satisfying all applicable education, experience, fingerprint and criminal history check requirements.

~~[(3) To renew a license on active status, a license holder must complete the ACE report form approved by the Board and, within 20 days of filing the renewal application, submit course completion certificates for each course that was not already submitted by the education provider and reflected in the license holder's electronic license record.]~~

~~[(A) The Board may request additional verification of ACE submitted in connection with a renewal. If requested, such documentation must be provided within 20 days after the date of request.]~~

~~[(B) Knowingly or intentionally furnishing false or misleading ACE information in connection with a renewal is grounds for disciplinary action up to and including license revocation.]~~

(3) [(4)] An application for renewal received by the Board is timely and acceptable for processing if it is:

(A) complete;

(B) accompanied with payment of the required fees; and

(C) postmarked by the U.S. Postal Service, accepted by an overnight delivery service, or accepted by the Board's online processing system on or before the date of expiration.

(b) ACE Extensions.

(1) The Board may grant, at the time it issues a license renewal, an extension of time of up to 60 days after the expiration date

of the previous license to complete ACE required to renew a license, subject to the following:

(A) The license holder must:

- (i) timely submit the completed renewal form;
- (ii) complete an extension request form; and
- (iii) pay the required renewal and extension fees.

(B) ACE courses completed during the 60-day extension period apply only to the current renewal and may not be applied to any subsequent renewal of the license.

(C) A person whose license was renewed with a 60-day ACE extension:

(i) will be designated as non-AQB compliant on the National Registry and will not perform appraisals in a federally related transaction until verification is received by the Board that the ACE requirements have been met;

(ii) may continue to perform appraisals in non-federally related transactions under the renewed license;

(iii) must, within 60 days after the date of expiration of the previous license, complete the approved ACE report form and submit course completion certificates for each course that was not already submitted by the provider and reflected in the applicant's electronic license record; and

(iv) will have the renewed license placed in inactive status if, within 60 days of the previous expiration date, ACE is not completed and reported in the manner indicated in paragraph (2) of this subsection. The renewed license will remain in inactive status until satisfactory evidence of meeting the ACE requirements has been received by the Board and the fee to return to active status required by §153.5 of this title (relating to Fees) has been paid.

(2) Appraiser trainees may not obtain an extension of time to complete required continuing education.

(c) **Renewal of Licenses for Persons on Active Duty.** A person who is on active duty in the United States armed forces may renew an expired license without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(1) did not provide appraisal services while on active duty;

(2) provides a copy of official orders or other documentation acceptable to the Board showing the person was on active duty during the last renewal period;

(3) applies for the renewal within two years after the person's active duty ends;

(4) pays the renewal application fees in effect when the previous license expired; and

(5) completes ACE requirements that would have been imposed for a timely renewal.

(d) **Late Renewal.** If an application is filed within six months of the expiration of a previous license, the applicant shall also provide satisfactory evidence of completion of any continuing education that would have been required for a timely renewal of the previous license.

(e) **Denial of Renewal.** The Board may deny an application for license renewal if the license holder is in violation of a Board order. §153.20. *Guidelines for Disciplinary Action [Revocation, Suspension], Denial of License; Probationary License.*

(a) The Board may take disciplinary action [suspend or revoke a license] or deny issuing a license to an applicant at any time the Board determines that the applicant or license holder:

(1) disregards or violates a provision of the Act or the Board rules;

(2) is convicted of a felony;

(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the Board not later than the 30th day after the date disciplinary action becomes final against the person with regard to any occupational license the person holds in Texas or any other jurisdiction;

(6) fails to comply with the USPAP edition in effect at the time of the appraiser service;

(7) acts or holds himself or herself or any other person out as a person licensed under the Act or by another jurisdiction when not so licensed;

(8) accepts payment for appraiser services but fails to deliver the agreed service in the agreed upon manner;

(9) refuses to refund payment received for appraiser services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made in writing to the client;

(11) offers to perform appraiser services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made in writing to the client;

(12) makes a material misrepresentation or omission of material fact;

(13) has had a license as an appraiser revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is a crime under Texas law;

(14) procures, or attempts to procure, a license by making false, misleading, or fraudulent representation;

(15) fails to actively, personally, and diligently supervise an appraiser trainee or any person not licensed under the Act who assists the license holder in performing real estate appraiser services;

(16) has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;

(B) intentional or knowing misrepresentation;

(C) grossly negligent misrepresentation in the performance of appraiser services;

(17) fails to make good on a payment issued to the Board within thirty days after the Board has mailed a request for payment by certified mail to the license holder's last known business address as reflected by the Board's records;

(18) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;

~~[(19) acts or holds himself or any other person out as a person licensed under this or another state's Act when not so licensed;]~~

19 ~~[(20)]~~ misuses or misrepresents the type of classification or category of license number;

20 ~~[(21)]~~ engages in any other act relating to the business of appraising that the Board, in its discretion, believes warrants a suspension or revocation;

21 ~~[(22)]~~ uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to perform licensed appraisal services;

22 ~~[(23)]~~ fails to comply with an agreed order or a final order of the Board;

23 ~~[(24)]~~ fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said individual's address of record, or within the time period allowed if granted a written extension by the Board; or

24 ~~[(25)]~~ after conducting reasonable due diligence, knowingly accepts an assignment from an appraisal management company that is not exempt from registration under the Act which:

(A) has not registered with the Board; or

(B) is registered with the Board but has not placed the appraiser on its panel of appraisers maintained with the Board; or

25 ~~[(26)]~~ fails to approve, sign, and deliver to their appraiser trainee the appraisal experience log and affidavit required by §153.15(f)(1) and §153.17(c)(1) of this title for all experience actually and lawfully acquired by the trainee while under the appraiser's sponsorship.

(b) The Board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section.

(c) The Board may probate a penalty or sanction, and may impose conditions of the probation, including, but not limited to:

(1) the type and scope of appraisals or appraisal practice;

(2) the number of appraiser trainees or authority to sponsor appraiser trainees;

(3) requirements for additional education;

(4) monetary administrative penalties; and

(5) requirements for reporting real property appraisal activity to the Board.

(d) A person applying for a license after the Board has revoked or accepted the surrender in lieu of disciplinary action of a license previously held by that person must comply with all current license requirements. Such persons may not apply to reinstate a previously held license as provided in §153.16 of this title.

(e) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the Act or other laws of this State.

(f) The Board may not investigate a complaint submitted to the Board more than four years after the date on which the alleged violation occurred.

(g) Except as provided by Texas Government Code §402.031(b) and Texas Penal Code §32.32(d), there shall be no undercover or covert investigations conducted by authority of the Act.

(h) A license may be revoked or suspended by the Attorney General or other court of competent jurisdiction for failure to pay child support under the provisions of Chapter 232 of the Texas Family Code.

(i) If the Board determines that issuance of a probationary license is appropriate, the order entered by the Board with regard to the application must set forth the terms and conditions for the probationary license. Terms and conditions for a probationary license may include any of the following:

(1) that the probationary license holder comply with the Act and with the rules of the Texas Appraiser Licensing and Certification Board;

(2) that the probationary license holder fully cooperate with the TALCB Division ~~[enforcement division]~~ of the Board in the investigation of any complaint filed against the license holder or any other complaint in which the license holder may have relevant information;

(3) that the probationary license holder attend a prescribed number of classroom hours in specific areas of study during the probationary period;

(4) that the probationary license holder limit appraisal practice as prescribed in the order;

(5) that the probationary license holder work under the direct supervision of a certified general or certified residential appraiser who will review and sign each appraisal report completed;

(6) that the probationary license holder report regularly to the Board on any matter which is the basis of the probationary license; or

(7) that the probationary license holder comply with any other terms and conditions contained in the order which have been found to be reasonable and appropriate by the Board after due consideration of the circumstances involved in the particular application.

(j) Unless the order granting a probationary license specifies otherwise, a probationary license holder may renew the license after the probationary period by filing a renewal application, satisfying applicable renewal requirements, and paying the prescribed renewal fee.

(k) If a probationary license expires prior to the completion of a probationary term and the probationary license holder files a late renewal application, any remaining probationary period shall be reinstated effective as of the day following the renewal of the probationary license.

§153.21. Appraiser Trainees and Supervisory Appraisers.

(a) Supervision of appraiser trainees required.

(1) An appraiser trainee may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a supervisory appraiser.

(2) An appraiser trainee may be supervised by more than one supervisory appraiser.

(3) Number of Appraiser Trainees Supervised.

(A) Supervisory appraisers may supervise no more than three appraiser trainees at one time unless the requirements in subsection (a)(3)(B) of this section, are met;

(B) Supervisory appraisers may supervise up to five appraiser trainees at one time if:

(i) the supervisory appraiser has been licensed as a certified appraiser for more than five years; [and]

(ii) the supervisory appraiser submits an application and a trainee supervision plan subject to approval by the Board. The supervision plan must include the supervisory appraiser's plan for progress monitoring of the trainees and detail how the supervisor intends to ensure active, personal, and diligent supervision of each trainee; and [all of the supervisory appraiser's appraiser trainees must submit requests for the Board to review the appraiser trainee's work product as specified in §153.22 of this title (relating to Voluntary Appraiser Trainee Experience Reviews), or satisfy the required progress monitoring as permitted in §153.16 of this title (relating to License Reinstatement).]

(iii) the supervisory appraiser shall prepare and maintain regular trainee progress reports and make them available to the Board upon request until the trainee becomes certified or licensed or after two years have lapsed since supervising the trainee.

(4) A supervisory appraiser may be added during the term of an appraiser trainee's license if:

(A) The supervisory appraiser and appraiser trainee have provided proof to the Board of completion of an approved Appraiser Trainee/Supervisory Appraiser course;

(B) an application to supervise has been received and approved by the Board; and

(C) the applicable fee has been paid.

(5) A licensed appraiser trainee who signs an appraisal report must include his or her license number and the word "Trainee" as part of the appraiser trainee's signature in the report.

(b) Eligibility requirements for appraiser trainee supervision.

(1) To be eligible to supervise an appraiser trainee, a certified appraiser must:

(A) be in good standing and not have had, within the last three years, disciplinary action affecting the certified appraiser's legal eligibility to engage in appraisal practice in any state including suspension, revocation, and surrender in lieu of discipline;

(B) complete an approved Appraiser Trainee/Supervisory Appraiser course; and

(C) submit proof of course completion to the Board.

(2) Before supervising an appraiser trainee, the supervisory appraiser must notify the appraiser trainee in writing of any disciplinary action taken against the supervisory appraiser within the last three years that did not affect the supervisory appraiser's eligibility to engage in appraisal practice.

(3) An application to supervise must be received and approved by the Board before supervision begins.

(c) Maintaining eligibility to supervise appraiser trainees.

(1) A supervisory appraiser who wishes to continue to supervise appraiser trainees upon renewal of his/her license must complete an approved Appraiser Trainee/Supervisory Appraiser course within four years before the expiration date of the supervisory

appraiser's current license and provide proof of completion to the Board.

(2) If a supervisory appraiser has not provided proof of course completion at the time of renewal, but has met all other requirements for renewing the license the supervisory appraiser will no longer be eligible to supervise appraiser trainees; and the Board will take the following actions:

(A) the supervisory appraiser's license will be renewed on active status; and

(B) the license of any appraiser trainees supervised solely by that supervisory appraiser will be placed on inactive status.

(3) A certified appraiser may restore eligibility to supervise appraiser trainees by:

(A) completing the course required by this section; and

(B) submitting proof of course completion to the Board.

(4) The supervisory appraiser's supervision of previously supervised appraiser trainees may be reinstated by:

(A) submitting the required form to the Board; and

(B) payment of any applicable fees.

(d) Maintaining eligibility to act as an appraiser trainee.

(1) Appraiser trainees must maintain an appraisal log and appraisal experience affidavits on forms approved by the Board, for the license period being renewed. It is the responsibility of both the appraiser trainee and the supervisory appraiser to ensure the appraisal log is accurate, complete and signed by both parties at least quarterly or upon change in supervisory appraiser. The appraiser trainee will promptly provide copies of the experience logs and affidavits to the Board upon request.

(2) An appraiser trainee must complete an approved Appraiser Trainee/Supervisory Appraiser course within four years before the expiration date of the appraiser trainee's current license and provide proof of completion to the Board.

(3) If an appraiser trainee has not provided proof of course completion at the time of renewal, but has met all other requirements for renewing the license:

(A) the Board will renew the appraiser trainee's license on inactive status;

(B) the appraiser trainee will no longer be eligible to perform appraisals or appraisal services; and

(C) the appraiser trainee's relationship with any supervisory appraiser will be terminated.

(4) An appraiser trainee may return the appraiser trainee's license to active status by:

(A) completing the course required by this section;

(B) submitting proof of course completion to the Board;

(C) submitting an application to return to active status, including an application to add a supervisory appraiser; and

(D) paying any required fees.

(e) Duties of the supervisory appraiser.

(1) Supervisory appraisers are responsible to the public and to the Board for the conduct of the appraiser trainee under the Act.

(2) The supervisory appraiser assumes all the duties, responsibilities, and obligations of a supervisory appraiser as specified in these rules and must diligently supervise the appraiser trainee. Diligent supervision includes, but is not limited to, the following:

(A) direct supervision and training as necessary;

(B) ongoing training and supervision as necessary after the supervisory appraiser determines that the appraiser trainee no longer requires direct supervision;

(C) communication with and accessibility to the appraiser trainee; and

(D) review and quality control of the appraiser trainee's work.

(3) Supervisory appraisers must approve and sign the appraiser trainee's appraisal log and experience affidavit at least quarterly and provide appraiser trainees with access to any appraisals and work files completed under the supervisory appraiser.

(4) After notice and hearing, the Board may reprimand a supervisory appraiser or may suspend or revoke a supervisory appraiser's license based on conduct by the appraiser trainee constituting a violation of the Act or Board rules.

(f) Termination of supervision.

(1) Supervision may be terminated by the supervisory appraiser or the appraiser trainee.

(2) If supervision is terminated, the terminating party must:

(A) immediately notify the Board on a form approved by the Board; and

(B) notify the non-terminating party in writing no later than the 10th day after the date of termination; and

(C) pay any applicable fees no later than the 10th day after the date of termination.

(3) If an appraiser trainee is no longer under the supervision of a supervisory appraiser:

(A) the appraiser trainee may no longer perform the duties of an appraiser trainee; and

(B) is not eligible to perform those duties until:

(i) an application to supervise the trainee has been filed;

(ii) any required fees have been paid; and

(iii) the Board has approved the application.

(g) Course approval.

(1) To obtain Board approval of an Appraiser Trainee/Supervisory Appraiser course, a course provider must:

(A) submit form ATS-0, Appraiser Trainee/Supervisory Appraiser Course Approval, adopted herein by reference; and

(B) satisfy the Board that all required content set out in form ATS-0 is adequately covered.

(2) Approval of an Appraiser Trainee/Supervisory Appraiser course shall expire two years from the date of Board approval.

(3) An Appraiser Trainee/Supervisory Appraiser course may be delivered through:

(A) classroom delivery [method]; or

(B) synchronous, asynchronous or hybrid distance education delivery. The course design and delivery mechanism for asynchronous distance education courses, including the asynchronous portion of hybrid courses must be approved by an AQB approved organization. [method. The delivery mechanism for distance education courses offered by a non-academic provider must be approved by an AQB-approved organization providing approval of course design and delivery.]

(h) ACE credit.

(1) Supervisory appraisers who complete the Appraiser Trainee/Supervisory Appraiser course may receive ACE credit for the course.

(2) Appraiser Trainees may not receive qualifying or ACE credit for completing the Appraiser Trainee/Supervisory Appraiser course.

§153.22. Voluntary Appraiser [Trainee] Experience Reviews.

(a) Before applying for a license, a person [an appraiser trainee] may submit up to two requests for the Board to review the appraiser trainee's work product.

(b) A person [An appraiser trainee] may submit an application to the Board for review of his or her [the appraiser trainee's] work product after:

(1) accumulating between thirty to fifty percent of the hours of appraisal experience required by the AQB for category of appraiser license the person [appraiser trainee] will be applying for;

(2) accumulating between sixty to eighty percent of the hours of appraisal experience required by the AQB for category of appraiser license the person [appraiser trainee] will be applying for; or

(3) both.

(c) Work product submitted for review must fall within one of the approved categories of experience credit described in §153.15 [§153.15(e)] of this title and meet the definition of real estate appraisal experience in §153.1 of this title.

~~[(d) To begin the review process, an appraiser trainee must:]~~

~~[(1) submit an application for work product review on a form approved by the Board;]~~

~~[(2) pay the required fee; and]~~

~~[(3) submit a completed appraisal report and corresponding work file from a time period during which the appraiser trainee had legal authority to perform the work.]~~

~~[(d) [(e)] The application for review of [an appraiser trainee's] work product is not complete until the completed report and workfile, [appraiser trainee submits] all required documentation and [pays] the required fee are received by the Board.~~

~~[(e) [(f)] If a person [an appraiser trainee] provides inadequate documentation, the Board will notify [contact] the person [appraiser trainee] in writing, and identify any deficiencies. Unless the work product review applicant cures the deficiencies within twenty days of notification, the Board will terminate the application for work product review. [and provide the appraiser trainee twenty days to cure the noted deficiencies. If the appraiser trainee fails to cure the deficiencies timely, the Board will terminate the appraiser trainee's application for work product review.]~~

~~[(f) [(g)] The Board will provide [the appraiser trainee with] a written report identifying deficiencies in the [appraiser trainee's] work product after the [application for] review is complete.~~

~~[(g) [(h)] A review conducted under this provision:~~

- (1) is for educational purposes only;
- (2) does not constitute Board approval of the [appraiser trainee's] experience;
- (3) does not preclude the Board from denying a license application submitted by the work product review applicant [appraiser trainee] in the future; and

(4) will not result in a complaint against the work product review applicant [appraiser trainee] unless the review [of the appraiser trainee's work product] reveals:

- (A) knowing or intentional misrepresentation, fraud or criminal conduct; or
- (B) serious deficiencies that constitute grossly negligent acts or omissions.

§153.23. Inactive Status.

(a) A license holder may request to be placed on inactive status by filing a request for inactive status on a form approved by the Board [and paying the required fee].

(b) A license holder whose license has expired may renew on inactive status within six months after the license expiration date by:

- (1) filing an application for renewal on a form approved by the Board;
- (2) indicating on the application that the license holder wishes to renew on inactive status;
- (3) paying the required late renewal fees; and
- (4) satisfying the fingerprint and criminal history check requirements in §153.12 of this title.

(c) A license holder on inactive status:

- (1) shall not appraise real property, engage in appraisal practice, or perform any activity for which a license is required; and
- (2) must file the proper renewal application and pay all required fees, except for the national registry fee, in order to renew the license.

(d) To return to active status, a license holder who has been placed on inactive status must:

- (1) request to return to active status on a form approved by the Board;
- (2) pay the required fee;
- (3) satisfy all ACE requirements that were not completed while on inactive status, except that the license holder is not required to complete the most current USPAP update course more than once in order to return to active status and shall substitute other approved courses to meet the required number of ACE hours; and
- (4) satisfy the fingerprint and criminal history check requirements in §153.12 of this title.

(e) A license holder who has been on inactive status may not resume practice until the Board issues an active license.

§153.24. Complaint Processing.

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the individual named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff shall:

- (1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the Complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the Act, Board rules, or USPAP that:

(1) evidence serious deficiencies, including:

- (A) Fraud;
- (B) Identity theft;
- (C) Unlicensed activity;
- (D) Ethical violations;
- (E) Failure to properly supervise an appraiser trainee;

or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

- (A) with knowledge;
- (B) deliberately;
- (C) willfully; or
- (D) with gross negligence.

(c) The Board or the Commissioner may delegate to staff the duty to dismiss complaints. The complaint shall be dismissed with no further processing if the staff determines at any time that:

- (1) the complaint is not within the Board's jurisdiction;
- (2) no violation exists; or
- (3) an allegation or formal complaint is inappropriate or without merit.

(d) A determination that an allegation or complaint is inappropriate or without merit includes a determination that the allegation or complaint:

- (1) was made in bad faith;
- (2) filed for the purpose of harassment;
- (3) to gain a competitive or economic advantage; or
- (4) lacks sufficient basis in fact or evidence.

(e) Staff shall conduct a preliminary inquiry to determine if dismissal is required under subsection (d) of this section.

(f) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

- (1) may be investigated covertly; and
- (2) shall be referred to the appropriate prosecutorial authorities.

(g) Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint.

(h) As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation shall be sent to the Respondent unless the complaint qualifies for covert investigation and the TALCB [Standards and Enforcement Services] Division deems covert investigation appropriate.

(i) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(j) The Respondent shall submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response shall include the following:

(1) a copy of the appraisal report that is the subject of the complaint;

(2) a copy of the Respondent's work file associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s): I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE.(SIGNATURE OF RESPONDENT);

(3) a narrative response to the complaint, addressing each and every item in the complaint;

(4) a list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) any documentation that supports Respondent's position that was not in the work file, as long as it is conspicuously labeled as non-work file documentation and kept separate from the work file. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(k) Staff will evaluate the complaint within three months after receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the Act, Board rules, or the USPAP exists to pursue investigation and possible formal disciplinary action. If the staff determines that there is no jurisdiction, no violation exists, there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (m) of this section, the complaint shall be dismissed with no further processing.

(l) A formal complaint will be opened and investigated by a staff investigator or peer investigative committee, as appropriate, if:

(1) the informal complaint is not dismissed under subsection (i) of this section; or

(2) staff opens a formal complaint on its own motion.

(m) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(n) The staff investigator [~~or peer investigative committee~~] assigned to investigate a formal complaint shall prepare a report detailing its findings on a form approved by the Board. [~~Reports prepared by a peer investigative committee shall be reviewed by the Standards and Enforcement Services Division.~~]

(o) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and

subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing, and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline was issued by the Board more than seven years before the current alleged violation occurred;

(B) Prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(C) A violation refers to a violation of any provision of the Act, Board rules or USPAP;

(D) "Minor deficiencies" is defined as violations of the Act, Board rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the license holder's honesty, integrity, or trustworthiness to the Board, the license holder's clients, or intended users of the appraisal service provided;

(E) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP that:

(i) impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the license holder's honesty, trustworthiness or integrity to the Board, the license holder's clients, or intended users of the appraisal service provided; or

(ii) are deficiencies done with knowledge, deliberate or willful disregard, or gross negligence that would otherwise be classified as "minor deficiencies";

(F) "Remedial measures" include, but are not limited to, training, mentorship, education, reexamination, or any combination thereof; and

(G) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal and, if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the prior discipline, including:

(i) Whether prior discipline concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions previously imposed; and

(iii) The length of time since the prior discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the extent or amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) The following sanctions guidelines shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

or

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures; or

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, not to exceed \$3,000 in the aggregate.

(C) 1st Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(D) 2nd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

or

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(E) 2nd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules,

or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,000 to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(H) 3rd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3--violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; or

(ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(J) 4th Time Discipline--violations of the Act, Board rules, or USPAP will result in a final order which imposes the following:

(i) A revocation; and

(ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board rules, or the Act, up to the maximum \$5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes a \$1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum \$5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

(A) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) probating all or a portion of any sanction or administrative penalty for a period not to exceed five years;

(C) requiring additional reporting requirements; and

(D) such other recommendations, with documented support, as will achieve the purposes of the Act, Board rules, or USPAP.

(p) The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(q) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by:

(1) the Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be (in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) a representative of the TALCB [Standards and Enforcement Services] Division; and

(4) the Commissioner or his or her designee.

§153.26. Identity Theft.

(a) For purposes of this section, "identity theft" shall mean any of the following activities occurring in connection with the rendition of real estate appraisal services:

(1) Unlawfully obtaining, possessing, transferring or using a license issued by the Board; and/or

(2) Unlawfully obtaining, possessing, transferring or using a person's electronic or handwritten signature.

(b) A license holder shall implement and maintain reasonable procedures to protect and safeguard themselves from identity theft.

(c) A license holder shall notify the Board if he or she is the victim of identity theft within 90 days of discovering such theft. Notice shall be effectuated by filing a signed, written complaint on a form prescribed by the Board.

(d) The Board may invalidate a current license and issue a new one to a person the Board determines is a victim of identity theft. Any person seeking the invalidation of a current license issuance of a new

one shall submit a written, signed request on a form provided by the Board for the invalidation of a current license and issuance of a new one. The basis for the request must be identity theft, and the requestor must submit credible evidence that the person is a victim of identity theft. Without limiting the type of evidence a person may submit to the Board, a court order issued in accordance with Texas Business and Commerce Code Chapter 521, Subchapter C, declaring that the person is a victim of identity theft shall constitute credible evidence. Any such court order must relate to identity theft as defined in this section.

(e) Engaging in identity theft in order to perform appraisals constitutes a violation of §153.20(a)(7), (19) [(20)], and (21) [(22)] of this title. In addition to any action taken by the Board, persons engaging in identity theft may also be referred to the appropriate law enforcement agency for criminal prosecution.

§153.28. Peer Investigative Committee Review.

(a) The Board Chair, with the advice and consent of the Executive Committee, may appoint a Peer Investigative Committee pool at least every two years.

(b) A panel of the Peer Investigative Committee shall consist of:

(1) an Appraiser Board Member;

(2) a Board Member who is a licensed or certified appraiser; and

(3) a TALCB Investigator [or a Peer Investigator. A Peer Investigator shall work in conjunction with a TALCB Investigator to ensure consistency in form, investigatory standards, and any other assistance as needed].

(c) The Board members serving on the Peer Investigative Committee shall serve on the committee on a rotating [quarterly] basis.

(d) During complaint intake, the TALCB [Enforcement] Director or his or her designee shall assign a TALCB Investigator [or Peer Investigator working in conjunction with a TALCB Investigator] to investigate the complaint.

(e) Complaints in which adverse action or [including] continuing dismissals[,] is recommended by an investigator are subject to review by the Peer Investigative Committee. Complaints that result in dismissals, defaults, or warning letters are not subject to review by the Peer Investigative Committee.

(f) No more than 7 days following the investigator's completion of an investigative report [Investigative Report], the investigator shall provide his or her findings, including the investigative report and the complaint file, to the Board members of the Peer Investigative Committee. The investigative report must include:

(1) a statement of facts;

(2) the investigator's recommendations; and

(3) the position or defense of the respondent.

(g) Board members of the Peer Investigative Committee, Investigators, and staff may elect to confer in person, via e-mail, or video conference prior to the Board members' determination.

(h) The Board delegates its authority to receive the written findings or determination of the Peer Investigative Committee to the Commissioner.

(i) No more than five business days after the review of the investigator's findings, the Board members of Committee shall render a determination agreeing or disagreeing with the investigator's finding of alleged violations and submit a copy of their determination to the Com-

missioner or his or her designee on behalf of the Board. The determination shall serve as a recommendation to the TALCB [Enforcement] Division as to whether to pursue adverse action against a respondent. A copy of the Board members' determination shall be included in the complaint file. The Board Chair may request statistical data related to the investigator's recommendations, Board members' determination, and adverse action pursued by the [Enforcement] Division.

(j) Board members who participate in the Peer Investigative Committee Review of a complaint are disqualified from participating in any future adjudication of the same complaint.

§153.40. *Approval of Continuing Education Providers and Courses.*

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

(1) Applicant--A person seeking accreditation or approval to be an appraiser continuing education (ACE) provider.

~~[(2) ACE--Appraiser continuing education.]~~

(2) ~~[(3)]~~ ACE course--Any education course for which continuing education credit may be granted by the Board to a license holder.

(3) ~~[(4)]~~ ACE provider--Any person approved by the Board; or specifically exempt by the Act, Chapter 1103, Texas Occupation Code, or Board rule; that offers a course for which continuing education credit may be granted by the Board to a license holder.

~~[(5) Classroom course--A course in which the instructor and students interact face to face, in real time and in the same physical location.]~~

(4) ~~[(6)]~~ Distance education course--A course offered in accordance with AQB criteria in which the instructor and students are geographically separated as defined by the AQB. Distance education includes synchronous delivery, when the instructor and student interact simultaneously online; asynchronous delivery, when the instructor and student interaction is non-simultaneous; and hybrid or blended course delivery that allows for both in-person and online interaction, either synchronous or asynchronous.

(5) ~~[(7)]~~ Severe weather--weather conditions, including but not limited to severe thunderstorms, tornados, hurricanes, snow and ice, that pose risks to life or property and require intervention by government authorities and office or school closures.

(b) Approval of ACE Providers.

(1) A person seeking to offer ACE courses must:

(A) file an application on the appropriate form approved by the Board, with all required documentation;

(B) pay the required fees under §153.5 of this title; and

(C) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the continuing education provider is required to maintain by this subchapter.

(2) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(3) Exempt Providers. A unit of federal, state or local government may submit ACE course approvals without becoming an approved ACE provider.

(4) Standards for approval. To be approved by the Board to offer ACE courses, an applicant must satisfy the Board as to the applicant's ability to administer courses with competency, honesty trustworthiness and integrity. If an applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(5) Approval notice. An applicant shall not act as or represent itself to be an approved ACE provider until the applicant has received written notice of the approval from the Board.

(6) Period of initial approval. The initial approval of a CE provider is valid for two years.

(7) Disapproval.

(A) If the Board determines that an applicant does not meet the standards for approval, the Board will provide written notice of disapproval to the applicant.

(B) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Chapter 2001, Government Code, and Chapter 157 of this title. Venue for any hearing conducted under this section shall be in Travis County.

(8) Renewal.

(A) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two year period.

(B) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

(C) The Board may deny an application for renewal if the provider is in violation of a Board order.

(c) Application for approval of ACE courses. This subsection applies to appraiser education providers seeking to offer ACE courses.

(1) For each ACE course an applicant intends to offer, the applicant must:

(A) file an application on the appropriate form approved by the Board, with all required documentation; and

(B) pay the fees required by §153.5 of this title. ~~[-; including the:]~~

~~[(i) base fee; and]~~

~~[(ii) content review fee.]~~

(2) An ACE provider may file a single application for an ACE course offered through multiple delivery methods.

(3) An ACE provider who seeks approval of a new delivery method for a currently approved ACE course must submit a new application and pay all required fees.

(4) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(5) Standards for ACE course approval.

(A) To be approved as an ACE course by the Board, the course must:

(i) cover subject matter appropriate for appraiser continuing education as defined by the AQB;

(ii) submit a statement describing the objective of the course and the acceptable AQB topics covered;

(iii) be current and accurate; and

(iv) be at least two hours long.

(B) The course must be presented in full hourly units.

(C) The course must be delivered by one of the following delivery methods:

(i) classroom delivery; or

(ii) distance education.

(D) The course design and delivery mechanism for asynchronous [aH] distance education courses, including the asynchronous portion of hybrid courses must be approved by an AQB approved organization.

(6) Approval notice.

(A) An ACE provider cannot offer an ACE course until the provider has received written notice of the approval from the Board.

(B) An ACE course expires two years from the date of approval. ACE providers must reapply and meet all current requirements of this section to offer the course for another two years.

(d) Approval of currently approved ACE course for a secondary provider.

(1) If an ACE provider wants to offer an ACE course currently approved for another provider, the secondary provider must:

(A) file an application on the appropriate form approved by the Board, with all required documentation;

(B) submit written authorization to the Board from the author or provider for whom the course was initially approved granting permission for the secondary provider to offer the course; and

(C) pay the fees required by §153.5 of this title, [~~including the:~~

~~/(i) base fee; and]~~

~~/(ii) content review fee.]~~

(2) If approved to offer the currently approved course, the secondary provider must:

(A) offer the course as originally approved;

(B) assume the original expiration date;

(C) include any approved revisions;

(D) use all materials required for the course; and

(E) meet the requirements of subsection (j) of this section.

(e) Approval of ACE courses currently approved by the AQB or another state appraiser regulatory agency.

(1) To obtain Board approval of an ACE course currently approved by the AQB or another state appraiser regulatory agency, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation; and

(C) pay the course approval fee required by §153.5 of this title.

(2) If approved to offer the ACE course, the ACE provider must offer the course as approved by the AQB or other state appraiser regulatory agency, using all materials required for the course.

(3) Any course approval issued under this subsection expires the earlier of two years from the date of Board approval or the remaining term of approval granted by the AQB or other state appraiser regulatory agency.

(f) Approval of ACE courses for a 2-hour in-person one-time offering.

(1) To obtain Board approval of a 2-hour ACE course for an in-person one-time offering, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation; and

(C) pay the one-time offering course approval fee required by §153.5 of this title.

(2) Any course approved under this subsection is limited to the scheduled presentation date stated on the written notice of course approval issued by the Board.

(3) If a course approved under this subsection must be rescheduled due to circumstances beyond the provider's control, including severe weather or instructor illness, the Board may approve the revised course date if the provider:

(A) submits a request for revised course date on a form acceptable to the Board; and

(B) offers the course on the revised date in the same manner as it was originally approved.

(g) Application for approval to offer a 7-Hour National USPAP Update course.

(1) To obtain approval to offer a 7-Hour National USPAP Update course, the provider must:

(A) be approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation;

(C) submit written documentation to the Board demonstrating that the course and instructor are currently approved by the AQB;

(D) pay the course approval fee required by §153.5 of this title;

(E) use the current version of the USPAP; and

(F) ensure each student has access to his or her own electronic or paper copy of the current version of USPAP.

(2) Approved ACE providers of the 7-Hour National USPAP Update course may include up to one additional classroom credit hour of supplemental Texas specific information. This may include

topics such as the Act, Board rules, processes and procedures, enforcement issues or other topics deemed appropriate by the Board.

(h) Application for ACE course approval for a presentation by current Board members or staff. As authorized by law, current members of the Board and Board staff may teach or guest lecture as part of an approved ACE course. To obtain ACE course approval for a presentation by a Board member or staff, the provider must:

(1) file an application on the appropriate form approved by the Board, with all required documentation; and

(2) pay the fees required by §153.5 of this title.

(i) Responsibilities and Operations of ACE providers.

(1) ACE course examinations or course mechanism to demonstrate knowledge of the subject matter:

(A) are required for ACE distance education courses; and

(B) must comply with AQB requirements.

(2) Course evaluations. A provider shall provide each student enrolled in an ACE course a course evaluation form approved by the Board and a link to an online version of the evaluation form that a student may complete and submit to the provider after course completion.

(3) Course completion rosters.

(A) Classroom courses. Upon successful completion of an ACE classroom course, a provider shall submit to the Board a course completion roster in a format approved by the Board no later than the 10th day after the date a course is completed. The roster shall include:

(i) the provider's name and license number;

(ii) the instructor's name;

(iii) the course title;

(iv) the course approval number;

(v) the number of credit hours;

(vi) the date of issuance; and

(vii) the date the student started and completed the course. [; and]

~~[(viii) the signature of an authorized representative of the provider who was in attendance and for whom an authorized signature is on file with the Board.]~~

(B) Distance education courses. A provider shall maintain a Distance Education Reporting Form and submit information contained in that form by electronic means acceptable to the Board for each student completing the course not earlier than the number of hours for course credit after a student starts the course and not later than the 10th day after the student completes the course.

~~[(C) The Board will not accept unsigned course completion rosters.]~~

(4) An ACE provider may withhold any official course completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(5) Security and Maintenance of Records.

(A) An ACE provider shall maintain:

(i) adequate security against forgery for official completion documentation required by this subsection;

(ii) records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements; and

(iii) any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(B) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(C) Upon request, an ACE provider shall produce instructor and course evaluation forms for inspection by Board staff.

(6) Changes in Ownership or Operation of an approved ACE provider.

(A) An approved ACE provider shall obtain approval of the Board at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(i) ownership;

(ii) management; and

(iii) the location of main office and any other locations where courses are offered.

(B) An approved provider requesting approval of a change in ownership shall provide a Principal Application Form for each proposed new owner who would hold at least a 10% interest in the provider to the Board.

(j) Non-compliance.

(1) If the Board determines that an ACE course or provider no longer complies with the requirements for approval, the Board may suspend or revoke approval for the ACE course or provider.

(2) Proceedings to suspend or revoke approval of an ACE course or provider shall be conducted in accordance with §153.41 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.

Filed with the Office of the Secretary of State on May 6, 2022.

TRD-202201807

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: June 19, 2022

For further information, please call: (512) 936-3652

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20 - 537.23, 537.28, 537.30 - 537.33, 537.35, 537.37, 537.39 - 537.41, 537.43 - 537.48, 537.51, 537.52, 537.54 - 537.60, 537.62 - 537.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-15; §537.21, Standard Contract Form TREC No. 10-6; §537.22, Standard Contract Form TREC No. 11-7; §537.23, Standard Contract Form TREC No. 12-3; §537.28, Standard Contract Form TREC No. 20-16; §537.30, Standard Contract Form TREC No. 23-17; §537.31, Standard Contract Form TREC No. 24-17; §537.32, Standard Contract Form TREC No. 25-14; §537.33, Standard Contract Form TREC No. 26-7; §537.35, Standard Contract Form TREC No. 28-2; §537.37, Standard Contract Form TREC No. 30-15; §537.39, Standard Contract Form TREC No. 32-4; §537.40, Standard Contract Form TREC No. 33-2; §537.41, Standard Contract Form TREC No. 34-4; §537.43, Standard Contract Form TREC No. 36-9; §537.44, Standard Contract Form TREC No. 37-5; §537.45, Standard Contract Form TREC No. 38-7; §537.46, Standard Contract Form TREC No. 39-8; §537.47, Standard Contract Form TREC No. 40-9; §537.48, Standard Contract Form TREC No. 41-2; §537.51, Standard Contract Form TREC No. 44-2; §537.52, Standard Contract Form TREC No. 45-2; §537.54, Standard Contract Form TREC No. 47-0; §537.55, Standard Contract Form TREC No. 48-1; §537.56, Standard Contract Form TREC No. 49-1; §537.57, Standard Contract Form TREC No. 50-0; §537.58, Standard Contract Form TREC No. 51-0; §537.59, Standard Contract Form TREC No. 52-0; §537.60, Standard Contract Form TREC No. 53-0; and new §537.62, Standard Contract Form TREC No. OP-H, Seller's Disclosure Notice; §537.63, Standard Contract Form TREC No. OP-L, Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law; §537.64, Standard Contract Form TREC No. OP-M, Non-Realty Items Addendum; and §537.65, Standard Contract Form TREC No. OP-C, Notice to Prospective Buyer in Chapter 537, Professional Agreements and Standard Contracts.

The proposed amendments and new rules to Chapter 537 are made as a result of the Commission's quadrennial rule review. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. The proposed changes to the existing rules add the title of the form adopted by reference in each rule to the rule title and add clarifying language to specify which forms are for mandatory versus voluntary use by license holders. The new rules pair previously existing forms that were available for voluntary use by license holders with a rule to provide greater clarity about the forms purpose and use.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be improved clarity and greater transparency for members of the public and license holders.

For each year of the first five years the proposed amendments and new rules are in effect, the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rules' applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

§537.20. Standard Contract Form TREC No. 9-15, Unimproved Property Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-15 approved by the Commission in 2021 for mandatory use in the sale of unimproved property where the intended use is for one to four family residences.

§537.21. Standard Contract Form TREC No. 10-6, Addendum for Sale of Other Property by Buyer.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 10-6 approved by the Commission in 2012 for mandatory use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts.

§537.22. Standard Contract Form TREC No. 11-7, Addendum for "Back-Up" Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 11-7 approved by the Commission in 2012 for mandatory use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts.

§537.23. Standard Contract Form TREC No. 12-3, Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 12-3 approved by the Commission in 2012 for mandatory use as an addendum to be attached to promulgated

forms of contracts where there is a Veterans Administration release of liability or restoration entitlement.

§537.28. Standard Contract Form TREC No. 20-16, One to Four Family Residential Contract (Resale).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-16 approved by the Commission in 2021 for mandatory use in the resale of residential real estate.

§537.30. Standard Contract Form TREC No. 23-17, New Home Contract (Incomplete Construction).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-17 approved by the Commission in 2021 for mandatory use in the sale of a new home where construction is incomplete.

§537.31. Standard Contract Form TREC No. 24-17, New Home Contract (Completed Construction).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-17 approved by the Commission in 2021 for mandatory use in the sale of a new home where construction is completed.

§537.32. Standard Contract Form TREC No. 25-14, Farm and Ranch Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-14 approved by the Commission in 2021 for mandatory use in the sale of a farm or ranch.

§537.33. Standard Contract Form TREC No. 26-7, Seller Financing Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 26-7 approved by the Commission in 2015 for mandatory use as an addendum concerning seller financing.

§537.35. Standard Contract Form TREC No. 28-2, Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 28-2 approved by the Commission in 2012 for mandatory use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands.

§537.37. Standard Contract Form TREC No. 30-15, Residential Condominium Contract (Resale).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-15 approved by the Commission in 2021 for mandatory use in the resale of a residential condominium unit.

§537.39. Standard Contract Form TREC No. 32-4, Condominium Resale Certificate.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 32-4 approved by the Commission in 2015 for voluntary use as a condominium resale certificate.

§537.40. Standard Contract Form TREC No. 33-2, Addendum for Coastal Area Property.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 33-2 approved by the Commission in 2012 for mandatory use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state.

§537.41. Standard Contract Form TREC No. 34-4, Addendum for Property Located Seaward of the Gulf Intercoastal Waterway.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 34-4 approved by the Commission in 2012 for mandatory use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway.

§537.43. Standard Contract Form TREC No. 36-9, Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-9 approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association.

§537.44. Standard Contract Form TREC No. 37-5, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in a Property Owners' Association.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 37-5 approved by the Commission in 2014 for voluntary use as a resale certificate when the property is subject to mandatory membership in an owners' association.

§537.45. Standard Contract Form TREC No. 38-7, Notice of Buyer's Termination of Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 38-7 approved by the Commission in 2021 for mandatory use as a buyer's notice of termination of contract.

§537.46. Standard Contract Form TREC No. 39-8, Amendment to Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 39-8 approved by the Commission in 2015 for mandatory use as an amendment to promulgated forms of contracts.

§537.47. Standard Contract Form TREC No. 40-9, Third Party Financing Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 40-9 approved by the Commission in 2019 for mandatory use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing.

§537.48. Standard Contract Form TREC No. 41-2, Loan Assumption Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 41-2 approved by the Commission in 2012 for mandatory use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan.

§537.51. Standard Contract Form TREC No. 44-2, Addendum for Reservation of Oil, Gas, and Other Minerals.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 44-2 approved by the Commission in 2014 for mandatory use as an addendum to be added to promulgated forms of contracts for the reservation of oil, gas, and other minerals.

§537.52. Standard Contract Form TREC No. 45-2, Short Sale Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 45-2 approved by the Commission in 2021 for mandatory use as an addendum to be added to promulgated forms of contracts in the short sale of property.

§537.54. Standard Contract Form TREC No. 47-0, Addendum for Property in a Propane Gas System Service Area.

The Texas Real Estate Commission (Commission) adopts by reference standard contract Form TREC No. 47-0 approved by the Commission

in 2014 for mandatory use when a property is located in a propane gas system service area.

§537.55. Standard Contract Form TREC No. 48-1, Addendum for Authorizing Hydrostatic Testing.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 48-1 approved by the Commission in 2019 for mandatory use as an addendum to be added to promulgated forms if the parties agree to hydrostatic testing.

§537.56. Standard Contract Form TREC No. 49-1, Addendum Concerning Right to Terminate Due to Lender's Appraisal.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 49-1 approved by the Commission in 2018 for mandatory use as an addendum to be added to promulgated forms concerning the right to terminate due to lender's appraisal.

§537.57. Standard Contract Form TREC No. 50-0, Seller's Notice of Termination of Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 50-0 approved by the Commission in 2018 for mandatory use as a seller's notice of termination of contract.

§537.58. Standard Contract Form TREC No. 51-0, Addendum Regarding Residential Leases.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 51-0 approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms of contracts as related to lease agreements.

§537.59. Standard Contract Form TREC No. 52-0, Addendum Regarding Fixture Leases.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 52-0 approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms as related to fixture leases.

§537.60. Standard Contract Form TREC No. 53-0, Addendum containing Notice of Obligation to Pay Improvement District Assessment.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 53-0 approved by the Commission in 2021 for voluntary use when the property is located in a public improvement district.

§537.62. Standard Contract Form TREC No. OP-H, Seller's Disclosure Notice.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. OP-H approved by the Commission in 2019 for voluntary use to fulfill the disclosure requirements of Texas Property Code § 5.008.

§537.63. Standard Contract Form TREC No. OP-L, Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. OP-L approved by the Commission in 2011 for voluntary use to comply with federal regulation to furnish a lead paint disclosure in properties constructed prior to 1978.

§537.64. Standard Contract Form TREC No. OP-M, Non-Realty Items Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. OP-M approved by the Commission in 2011 for voluntary use when the parties need to convey items of

personal property not already listed in Paragraph 2, Property, of the contracts.

§537.65. Standard Contract Form TREC No. OP-C, Notice to Prospective Buyer.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. OP-C approved by the Commission in 2011 for voluntary use when the parties use a contract of sale that has not been approved for mandatory use by the Commission.

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

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Abby Lee

Deputy General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3057



22 TAC §§537.26, 537.27, 537.61

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.26. Standard Contract Form TREC No. 15-5; §537.27. Standard Contract Form TREC No. 16-5; and new §537.61, Standard Contract Form TREC No. 54-0, Landlord's Floodplain and Flood Notice in Chapter 537, Professional Agreements and Standard Contracts.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rule to Chapter 537 to comply with statutory changes enacted by the 87th Legislature in HB 531.

HB 531 requires a landlord to disclose, in certain situations, whether the landlord is aware that the dwelling is located in a 100-year floodplain or that the dwelling has flooded within the last five years. Because landlords of temporary residential leases are not exempted, the proposed changes create a new flood disclosure notice form and add a new paragraph referencing the notice in the Seller's Temporary Residential Lease (TREC No. 15-5) and the Buyer's Temporary Residential Lease (TREC No. 1605).

Additionally, the proposed amendments to §537.26, Standard Contract Form TREC No. 15-5, and §537.27, Standard Contract Form TREC No. 16-5, contain proposed changes made as a result of the Commission's quadrennial rule review. Those changes add the corresponding standard contract form title to the rule title and add clarifying language to specify that both of the forms adopted by reference in these rules are for mandatory use by license holders.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the

sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will improved clarity and greater transparency for members of the public, as well as requirements that are consistent with the statute.

Except as noted below, for each year of the first five years the proposed amendments and new rule are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Proposed new §537.61 will create a new regulation as a result of the requirements of HB 531.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments and new rules are also proposed under Texas Occupations Code, §1101.155, which authorizes the Texas Real Estate Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the Commission.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

§537.26. Standard Contract Form TREC No. 15-6, Seller's Temporary Residential Lease [15-5].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 15-6 [15-5] approved by the Commission in 2022 [2012] for mandatory use as a residential lease when a seller temporarily occupies property after closing.

§537.27. Standard Contract Form TREC No. 16-6, Buyer's Temporary Residential Lease [16-5].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 16-6 [16-5] approved by the Commission in 2022 [2012] for mandatory use as a residential lease when a buyer temporarily occupies property before closing.

§537.61. Standard Contract Form TREC No. 54-0, Landlord's Floodplain and Flood Notice.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 54-0 approved by the Commission in 2022 for voluntary use as an addendum to be added to a residential lease, including a promulgated temporary residential lease form, to fulfill the disclosure requirements of §92.0135, Texas Property Code.

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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Abby Lee

Deputy General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3057



CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

22 TAC §§543.1 - 543.13

The Texas Real Estate Commission (TREC) proposes the repeal of 22 TAC §543.1, Registration; §543.2, Amendments; §543.3, Fees; §543.4, Forms; §543.5, Violations; §543.6, Complaints and Disciplinary Proceedings; §543.7, Contract Requirements; §543.8, Disclosure Requirement; §543.9, Exemptions; §543.10, Escrow Requirements; §543.11, Maintenance of Registration; §543.12, Renewal of Registration; and §543.13, Assumed Names, in Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act. The proposed repeal of these sections is made as a result of the Commission's quadrennial rule review, and more specifically, is the result of a proposed new definitions section in this chapter, which will require the renumbering of these sections. TREC will renumber and replace these rules, with some proposed changes.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeal. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed repeal. There is no significant economic cost anticipated for persons who are required to comply with the proposed repeal. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the repeal as proposed will be greater clarity in the rules.

For each year of the first five years the proposed repeal is in effect the repeal will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The statute affected by this proposal is Chapter 221, Property Code. No other statute, code or article is affected by the proposed repeal.

- §543.1. *Registration.*
- §543.2. *Amendments.*
- §543.3. *Fees.*
- §543.4. *Forms.*
- §543.5. *Violations.*
- §543.6. *Complaints and Disciplinary Proceedings.*
- §543.7. *Contract Requirements.*
- §543.8. *Disclosure Requirement.*
- §543.9. *Exemptions.*
- §543.10. *Escrow Requirements.*
- §543.11. *Maintenance of Registration.*
- §543.12. *Renewal of Registration.*
- §543.13. *Assumed Names.*

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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Abby Lee

Deputy General Counsel

Texas Real Estate Commission

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22 TAC §§543.1 - 543.14

The Texas Real Estate Commission (TREC) proposes new 22 TAC §543.1, Definitions; §543.2, Registration; §543.3,

Amendments; §543.4, Fees; §543.5, Forms; §543.6, Violations; §543.7, Complaints and Disciplinary Proceedings; §543.8, Contract Requirements; §543.9, Disclosure Requirement; §543.10, Exemptions; §543.11, Escrow Requirements; §543.12, Maintenance of Registration; §543.13, Renewal of Registration; and §543.14, Assumed Names, in Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act.

The proposed new rules to Chapter 543 are made as a result of the Commission's quadrennial rule review. The proposed changes add a new definitions section for ease of reading and update terminology for consistency throughout the chapter. Additionally, proposed new §543.5, Forms, and §543.13, Renewal of Registration, correct a reference to a Commission form.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed new rules are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rules. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rules. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the rules.

For each year of the first five years the proposed new rules are in effect the new rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit, or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The statute affected by this proposal is Chapter 221, Property Code. No other statute, code or article is affected by the proposed new rules.

§543.1. Definitions.

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

(1) Commission--The Texas Real Estate Commission.

(2) Texas Timeshare Act --Chapter 221, Texas Property Code.

§543.2. Registration.

(a) A developer who wishes to register a timeshare plan shall submit an application for registration using forms approved by the Commission. The Commission may not accept for filing an application submitted without a completed application form and the appropriate filing fee.

(b) If the Commission determines that an application for registration of a timeshare plan satisfies all requirements for registration, the Commission shall promptly register the timeshare plan. The Commission shall notify the applicant in writing that the timeshare plan has been registered, specifying the anniversary date of the registration, and shall assign a registration number to the timeshare plan.

(c) If the Commission determines that an application for registration of a timeshare plan fails to satisfy any requirement for registration, the Commission shall promptly notify the applicant of any deficiency in writing. The Commission may require an applicant to revise and resubmit written documents filed with the application or to provide additional information if the Commission determines that the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the Commission to cure any deficiency in the application, the Commission shall promptly register the timeshare plan and provide the applicant with the written notice required by these rules. An application will be terminated and the Commission shall take no further action if the applicant fails to submit a response to the Commission within three months after the Commission mails a request to the applicant for curative action.

§543.3. Amendments.

(a) A person who wishes to amend the registration of a timeshare plan shall submit an application to amend the registration using forms approved by the Commission. A developer may file an application to amend a registration before the occurrence of the change. The Commission may not accept for filing an application submitted without a completed application form and the appropriate filing fee.

(b) For the purposes of §221.023 and subsections (b)(26), (c)(9) and (d)(32) of §221.032 of the Texas Timeshare Act, a developer shall file amendments to the registration reporting to the Commission any material or materially adverse change in any document contained in a registration.

(c) "Material" includes, but is not limited to:

(1) a change of developer;

(2) a change of exchange company or association with an additional exchange company;

(3) an increase in assessments of 15% or more;

(4) any substantial change in the accommodations that are part of the timeshare plan;

(5) an increase or decrease in the number of timeshare interests in the timeshare plan registered by the Commission;

(6) a change of escrow agent or type of escrow or other financial assurance;

(7) if applicable, an increase of more than 20% in an original alternative assurance as defined by §221.063(a) of the Texas Timeshare Act;

(8) a change to a substantive provision of the escrow agreement between the escrow agent and the developer;

(9) a change of management company; or

(10) a change to a substantive provision of the management agreement.

(d) "Materially adverse" means any material change to the timeshare plan that substantially reduces the benefits or increases the costs to purchasers.

(e) Material or materially adverse does not include the correction of any typographical or other nonsubstantive changes.

(f) If the Commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would continue to satisfy all requirements for registration, the Commission shall promptly notify the applicant in writing that the registration has been amended, specifying the effective date of the amendment.

(g) If the Commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would fail to satisfy a requirement for registration, the Commission shall promptly notify the applicant of any deficiency. The Commission may require the applicant to revise and resubmit written documents filed with the application or to provide additional information if the Commission determines that the application or written material filed with the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the Commission to cure any deficiency in the application, the Commission shall promptly notify the applicant that the registration has been amended, specifying the effective date of the amendment.

§543.4. Fees.

(a) An applicant for registration of a timeshare plan or an applicant for abbreviated registration of a timeshare plan shall pay a filing fee of \$2.00 for each seven days of annual use availability in each accommodation that is a part of the timeshare plan, provided, however, that the Commission shall charge and collect a minimum filing fee of \$500.00 and that no registration filing fee shall exceed \$3,500.00.

(b) An applicant for amendment of the registration of a timeshare plan shall pay a minimum filing fee of \$100.00, provided, however, that the filing fee for an amendment that increases the number of timeshare interests to be sold from the number that existed or were proposed for sale in the original registration shall be \$2.00 for each seven days of annual use availability in each timeshare unit that is being added to the timeshare plan and that no filing fee shall exceed \$2,000.00.

(c) An applicant for pre-sale authorization shall pay a filing fee of \$100.00 in addition to the filing fee due under subsection (a) of this section.

(d) A filing fee is not refundable once an application is accepted for filing by the Commission.

(e) A developer of a registered timeshare plan shall pay a fee of \$100 to renew a registration.

(f) To reinstate an expired registration of the timeshare plan, a developer shall pay, in addition to the fee of \$100 to renew a timeshare plan, an additional fee of \$25 for each month the registration has been expired.

§543.5. Forms.

(a) The Commission adopts by reference the following forms to be used in connection with the registration, amendment, or renewal of a timeshare plan:

(1) Application to Register a Timeshare Plan, Form TSR 1-6;

(2) Application to Amend a Timeshare Registration, Form TSR 2-6;

(3) Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-4;

(4) Application for Pre-sale Authorization, Form TSR 4-0;

(5) Escrow Surety Bond, Form TSR 5-1;

(6) Construction Surety Bond, Form TSR 6-1;

(7) Consent to Service of Process, Form TSR 7-0; and

(8) Application to Renew the Registration of a Timeshare Plan, Form TSR 8-2.

(b) Forms approved or promulgated by the Commission must be submitted on copies obtained from the Commission, whether in printed format or electronically completed from the forms available on the Commission's website.

(c) Forms adopted by reference in this section are published by and available from the Texas Real Estate Commission at P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

§543.6. Violations.

(a) It is a material violation of the Texas Timeshare Act for a person to engage in any of the acts described in §221.071(a) of the Texas Timeshare Act.

(b) It is a material violation of the Texas Timeshare Act for a developer to represent to a potential purchaser of a timeshare interest by advertising or any other means that a timeshare plan has been approved by the State of Texas or the Commission or to represent that the State of Texas or the Commission has passed upon the merits of a timeshare plan. It is not a material violation of the Texas Timeshare Act for a registrant to represent that a timeshare plan has been registered if the registrant discloses at the same time and in the same manner that the State of Texas and the Commission have not approved the timeshare plan or passed upon the merits of the timeshare plan.

(c) It is a material violation of the Texas Timeshare Act for a developer to fail to file an application to amend a registration within one month of the occurrence of a material or materially adverse change in any document contained in the registration or to fail to submit a response together with any related material in a good faith effort to cure a deficient application to amend a registration within three months after the Commission has mailed to the applicant a request for curative action.

(d) It is a material violation of the Texas Timeshare Act for a person to procure or attempt to procure a registration or amendment to a registration by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application filed with the Commission.

(e) It is a material violation of the Texas Timeshare Act for a person to disregard or violate a rule of the Commission.

(f) It is a material violation of the Texas Timeshare Act for a developer to fail to make good a check issued to the Commission one month after the Commission has mailed a request for payment by

certified mail to the developer's last known mailing address as reflected by the Commission's records.

(g) It is a material violation of the Texas Timeshare Act for a developer to fail, not later than the 14th day after the date of a request, to provide information or documents requested by the Commission or a Commission representative in the course of the investigation of a complaint.

(h) It is a material violation of the Texas Timeshare Act for a developer to fail to properly file an assumed name as required by §221.037(b) of the Texas Timeshare Act or to fail to give the Commission timely written notice of the developer's use of an assumed name.

§543.7. Complaints and Disciplinary Proceedings.

(a) Complaints regarding registered timeshare plans shall be in writing and signed by the person filing the complaint.

(b) The Commission shall not investigate a complaint submitted more than four years after the date of the transaction that is the subject of the complaint.

(c) Disciplinary proceedings, including appeals, shall be conducted in accordance with the provisions of §221.024 of the Texas Timeshare Act, Chapter 533 of this title, and the Administrative Procedure Act, Chapter 2001, Government Code.

§543.8. Contract Requirements.

(a) For purposes of §221.043(a) of the Texas Timeshare Act, "conspicuous manner" means that:

(1) The type of the upper and lower case letters used shall be two point sizes larger than the largest non-conspicuous type, exclusive of heading, on the page on which it appears but in at least 10-point type; or

(2) Where the use of 10-point type would be impractical or impossible, a different style of type or print may be used, so long as the print remains conspicuous under the circumstances.

(b) For purposes of subsection (a) of this section, any conspicuous type utilized shall be separated on all sides from other type and print and may be utilized only where required by the Texas Timeshare Act or authorized by the Commission.

§543.9. Disclosure Requirement.

A developer may provide the disclosures required by §221.032 and §221.033 of the Texas Timeshare Act in an alternate format with the written agreement of the purchaser, provided the developer obtains a signed receipt evidencing that consent from the purchaser.

§543.10. Exemptions.

For purposes of §221.034(b) of the Texas Timeshare Act, the term "developer" shall include any entity in which the developer, or any affiliate of the developer, has at least a 25% interest.

§543.11. Escrow Requirements.

(a) For purposes of §221.063(a) of the Texas Timeshare Act, the alternative financial assurance from another state or jurisdiction must be for the same timeshare plan as the timeshare plan being registered or registration being amended.

(b) A timeshare developer shall, not later than the 10th day after the date of the change, provide the Commission with written notice of any increase or decrease in the original surety bond as provided for in §221.063(a) of the Texas Timeshare Act.

§543.12. Maintenance of Registration.

A developer shall give the Commission written notice of a change of the developer's mailing address not later than the 10th day after the date of the change.

§543.13. Renewal of Registration.

(a) The registration of a timeshare plan expires on the last day of the month two years after the date the plan was registered.

(b) A developer of a timeshare plan may renew the registration for a two-year period by completing an Application to Renew the Registration of a Timeshare Plan, Form TSR 8-2, and paying the appropriate filing fee.

(c) Three months before the expiration of a registration, the Commission shall mail a renewal application form to the developer's last known mailing address as shown in the Commission's records.

(d) An application to renew a timeshare plan is considered void and is subject to no further evaluation or processing when the developer fails to provide information or documentation within two months after the Commission makes written request for correct or additional information or documentation.

(e) Denial of Renewal. The Commission may deny an application for renewal of a registration if the developer of a timeshare plan is in violation of the terms of a Commission order.

§543.14. Assumed Names.

A developer who uses an assumed name under §221.037(b) of the Texas Timeshare Act instead of using the full name of the developer shall notify the Commission in writing at least 10 days before using the assumed name.

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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Abby Lee

Deputy General Counsel

Texas Real Estate Commission

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER B. LICENSING APPLICATION, MAINTENANCE, AND FEES

26 TAC §550.108

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §550.108, concerning Change of Ownership License Application Procedures and Issuance.

BACKGROUND AND PURPOSE

The purpose of the proposal is to authorize HHSC to issue a temporary change of ownership license in the name of the new owner of a prescribed pediatric extended care center (PPECC) and to complete a health inspection of the center while the new owner holds this temporary change of ownership license. The proposed amendment also authorizes HHSC to extend the duration of the temporary change of ownership license to allow HHSC additional time to perform the health inspection of the center.

These proposed amendments also update the licensure process to reflect the transition from paper applications to the use of the online licensure portal called Texas Unified Licensure Information Portal (TULIP) and to describe other processes relating to licensure and change of ownership.

The proposed amendments also add provisions to address the process for a license holder to change its name or add an owner with a disclosable interest when the center does not undergo a change of ownership.

In addition, the proposed amendments make non-substantive changes to add clarity; remove redundant language; change the lettering of the subsections to account for the addition of provisions; update rule references in response to the administrative transfer of the chapter from 40 Texas Administrative Code (TAC), Chapter 15, to 26 TAC Chapter 550; reorganize some provisions so that related topics are grouped together to facilitate navigation within the rule; and make edits to improve readability.

SECTION-BY-SECTION SUMMARY

The proposed amendment changes the title of the section by adding "and Notice of Changes" after "Change of Ownership License Application Procedures and Issuance."

The proposed amendment in subsection (a) adds a new definition for the term "temporary change of ownership license" to mean a temporary license issued to an applicant who proposes to become the new operator of a center that exists on the date the application is submitted. This proposed definition clarifies the meaning of the new term "temporary change of ownership license" as used in the rule.

The proposed amendments in new subsection (b) require the applicant to obtain a temporary change of ownership license followed by an initial three-year license in accordance with the section; explain that when HHSC approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the change of ownership's effective date indicated in the application; remove redundant language in current subsection (b) about the application requirements for an initial three-year license; and explain that between the change of ownership's effective date and the issuance of the temporary change of ownership license, the center's current license holder remains responsible under its license, although the applicant may operate a center on behalf of the current license holder during this period of time.

The proposed amendments in subsection (c) explain what the applicant is required to submit through HHSC's online portal TULIP; updates rule references in response to the administrative transfer of the chapter from 40 TAC Chapter 15 to 26 TAC Chapter 550; and directs the applicant and the center's current license holder to submit a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 through the online portal. In January 2021, HHSC began requiring the use

of this new form for changes of ownership involving assisted living facilities, nursing facilities, intermediate care facilities for individuals with an intellectual disability or related conditions, day activity and health services facilities, PPECCs, and home and community support services agencies.

The proposed amendments in subsection (d) update rule references in response to the administrative transfer of the chapter from 40 TAC Chapter 15 to 26 TAC Chapter 550.

The proposed amendments in subsections (e) and (f) make minor grammatical and formatting changes for clarity.

The proposed amendments in subsection (g) set forth the requirements necessary for HHSC to issue a temporary change of ownership license; authorize HHSC to issue a temporary change of ownership license in the new owner's name and to complete a health inspection while the new owner holds a temporary change of ownership license; specify that the issuance of the temporary change of ownership license constitutes HHSC's written notice of approval of the application for the change of ownership; and clarify the effective date requirements for the license.

The proposed amendment in subsection (h) establishes the expiration date of the temporary change of ownership license.

The proposed amendment in subsection (i) allows HHSC, in its sole discretion, to extend a temporary change of ownership license for one term of 90 days based upon extenuating circumstances. This change gives HHSC the flexibility to extend the duration of the license to allow HHSC additional time to perform the health inspection of the center.

The proposed amendments in new subsection (j) state that HHSC conducts a health inspection after HHSC issues a temporary change of ownership license and before issuance of a three-year license.

The proposed amendments in new subsection (k) state that HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection of the center after issuing a temporary change of ownership license.

The proposed amendments in new subsection (l) specify the requirements for HHSC to determine whether to issue the temporary change of ownership license holder a three-year license. Among other requirements, the center must pass the health inspection described in the rule. The proposed amendments also remove current subsections (j) and (k) because they are redundant with other provisions in the rule, as amended.

The proposed amendments add new subsection (m) to outline the process for a license holder to change its name when a change of ownership is not involved. This change is consistent with similar provisions in the change of ownership rules for other long-term care providers.

The proposed amendments add new subsection (n) to describe the process for a license holder to add an owner with a disclosable interest when a change of ownership is not involved. This change is consistent with similar provisions in the change of ownership rules for other long-term care providers.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not require changes to current business practices or impose additional costs or fees on those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be an anticipated decrease in the amount of time for a license to be issued in the incoming owner's name based on a change of ownership. The issuance of a temporary change of ownership license in the incoming owner's name allows the new owner to begin operational processes while HHSC is completing the health inspection of the center. These operational processes include entering contracts for leasing, lending, and Medicaid. Subsequently, the new owner can begin Medicaid billing and receive funding sooner, which will have a positive impact on the residents being served by the facility.

Another anticipated public benefit is a decrease in the transition time for the change of ownership, which will help both the outgoing and incoming owners of a facility in terms of business processes.

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

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R132" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, requiring the Executive Commissioner to adopt rules necessary to implement Chapter 248A, Prescribed Pediatric Extended Care Centers.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code §248A.101.

§550.108. Change of Ownership License Application Procedures and Issuance and Notice of Changes.

(a) For purposes of this section, a temporary change of ownership license is a temporary license issued to an applicant who proposes to become the new operator of a center that exists on the date the application is submitted.

(b) ~~[(a)]~~ A center license is not assignable or transferable. The [If a change of ownership occurs, the] applicant (new license holder) must obtain a temporary change of ownership license followed by an initial three-year license in accordance with [subsection (e) of] this section. When the Texas Health and Human Services Commission (HHSC) approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the effective date of the change of ownership indicated in the application. Between the effective date of the change of ownership and the issuance of the temporary change of ownership license, the current license holder remains responsible under its license; however, the applicant may operate a center on behalf of the current license holder during such period of time.

~~[(b) An application for a center license when there is a change of ownership is an application for an initial license.]~~

(c) An applicant must submit to HHSC through the online portal:

(1) a complete application for a license in accordance with HHSC instructions and §550.101 ~~[\$15.101]~~ of this subchapter (relating to Criteria and Eligibility for a License) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §550.112 ~~[\$15.112]~~ of this subchapter (relating to Licensing Fees);

(3) a letter of credit for \$250,000 from a bank that is insured by the Federal Deposit Insurance Corporation, or other documentation acceptable to HHSC, to demonstrate the applicant's financial viability; and

(4) a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 ~~[written notice]~~ from the applicant and the center's current [existing] license holder of intent to transfer operation of the center from the current license holder to the applicant, beginning on the change of ownership effective [a] date specified on the change of ownership application [by the applicant, unless waived in accordance with subsection (f) of this section].

(d) HHSC may deny issuance of a license if the applicant, a controlling person, or any person disclosed in the application [required to submit background and qualification information] fails to meet the criteria for a license established in §550.101 ~~[\$15.101]~~ of this subchapter or for any reason specified in §550.115 ~~[\$15.115]~~ of this subchapter (relating to Criteria for Denial of a License).

(e) To avoid a center operating without a license, an applicant must submit all items in subsection (c) of this section at least 30 days before the anticipated date of the change of ownership in accordance with HHSC [application] instructions, unless the 30-day notice requirement is waived in accordance with subsection (f) of this section.

(f) HHSC may waive the [The] 30-day notice required by subsection (e) of this section [may be waived by HHSC] if:

(1) the applicant presents evidence to HHSC demonstrating that an eviction of the center or a foreclosure of the property from which the center operates is imminent and that circumstance prevented the timely submission of the items specified in subsection (c) of this section [notice]; or

(2) HHSC, in its sole discretion, determines that circumstances are present that threaten a minor's health, safety, or welfare and necessitate waiver of timely submission of the items specified in subsection (c) of this section [notice].

(g) Upon HHSC approval of the items specified in subsection (c) of this section, HHSC issues a temporary change of ownership license to the applicant if HHSC finds that the applicant, all controlling persons, and all persons disclosed in the application satisfy the requirements in §§550.101(a) and (f) of this subchapter, 550.104 of this subchapter (relating to Applicant Disclosure Requirements), and 550.115 of this subchapter.

(1) The issuance of a temporary change of ownership license constitutes HHSC's official written notice to the facility of the approval of the application for a change of ownership.

(2) The effective date of the temporary change of ownership license is the date requested in the application and cannot precede the date the application is received by HHSC through the online portal.

(h) A temporary change of ownership license expires on the earlier of:

(1) 90 days after its effective date or the last day of any extension HHSC provides in accordance with subsection (i) of this section; or

(2) the date HHSC issues a three-year license in accordance with subsection (l) of this section.

(i) HHSC, in its sole discretion, may extend the term of a temporary change of ownership license by 90 days based upon extenuating circumstances.

(j) [(g)] HHSC conducts an on-site health inspection to verify compliance with the licensure requirements after [before] issuing a temporary change of ownership license [as a result of a change of ownership]. HHSC may conduct a desk review instead of an on-site health inspection after [before] issuing a temporary change of ownership license [as a result of a change of ownership] if:

(1) less than 50 percent of the direct or indirect ownership interest in the former license holder changed, when compared to the new license holder; or

(2) every person with a disclosable interest in the new license holder had a disclosable interest in the former license holder.

(k) [(h)] HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection after [before] issuing a temporary change of ownership license [as a result of a change of ownership].

(l) [(i)] If an applicant and all other persons disclosed in the application satisfy [meets] the requirements of §§550.101(a) and (f), 550.104, and 550.115 of this subchapter for a license, and the center passes the change of ownership health inspection as described in subsection (j) of this section, HHSC issues a three-year license. The effective date of the three-year license is the same date as the effective date of the change of ownership and cannot precede the date the application was received through the online portal [by HHSC Licensure and Credentialing Section].

[(j)] The initial license issued to the new license holder expires on the third anniversary after the effective date.

[(k)] The previous license holder's license is invalid on the effective date of the new license holder's initial license.

(m) If a license holder changes its name but does not undergo a change of ownership, the license holder must notify HHSC and submit documentation evidencing a legal name change by submitting an application through the online portal. On receipt of the notice and documentation, HHSC reissues the current license in the license holder's new name.

(n) If a license holder adds an owner with a disclosable interest, but the license holder does not undergo a change of ownership, the license holder must notify HHSC of the addition no later than 30 days after the addition of the owner by submitting an application through the online portal.

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 May 3, 2022.

TRD-202201744

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 19, 2022

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



CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN

INTELLECTUAL DISABILITY OR RELATED CONDITIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §551.16, concerning Change of Ownership and Notice of Changes, and to §551.214(d), concerning Protection of Residents After Report of Abuse, Neglect, and Exploitation, to correct a clerical error in the existing Texas Administrative Code.

BACKGROUND AND PURPOSE

The purpose of the proposal is to authorize HHSC to issue a temporary change of ownership license in the name of the new owner of an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) and to complete a health inspection of the facility while the new owner holds this temporary change of ownership license. The proposed amendment also authorizes HHSC to extend the duration of the temporary change of ownership license to allow HHSC additional time to perform the health inspection of the facility.

The proposed amendments also update the licensure process relating to change of ownership and make non-substantive changes to add clarity, improve consistency in the usage of terms, change the lettering of the subsections to account for the addition of provisions, and make edits to improve readability.

SECTION-BY-SECTION SUMMARY

The proposed amendment in §551.16(a) adds a new definition for the term "temporary change of ownership license" to mean a temporary license issued to an applicant who proposes to become the new operator of a facility that exists on the date the application is submitted. This proposed definition clarifies the meaning of the new term "temporary change of ownership license" as used in the rule. The amendment also adds language to state that once HHSC approves and issues a temporary change of ownership license, the new owner becomes responsible.

The proposed amendments in §551.16(b) require the applicant to obtain a temporary change of ownership license followed by an initial three-year license in accordance with the section; explain that when HHSC approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the change of ownership's effective date indicated in the application; and clarify that between the effective date of the change of ownership and the issuance of the temporary change of ownership license, the current license holder remains responsible under its license, although the applicant may operate a facility on behalf of the current license holder during this period of time.

The proposed amendments in §551.16(c) explain what the applicant is required to submit through HHSC's online portal, the Texas Unified Licensure Information Portal (TULIP). The amendments also direct the applicant and the facility's current license holder to submit a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 through the online portal. In January 2021, HHSC began requiring the use of this new form for changes of ownership involving assisted living facilities, nursing facilities, ICF/IIDs, day activity and health services facilities, prescribed pediatric extended care centers, and home and community support services agencies.

The proposed amendments in §551.16(d) and (e) make minor grammatical and formatting changes for clarity.

The proposed amendments in §551.16(f) set forth the requirements necessary for HHSC to issue a temporary change of ownership license; authorize HHSC to issue a temporary change of ownership license in the new owner's name and to complete a health inspection while the new owner holds a temporary change of ownership license; specify that the issuance of the temporary change of ownership license constitutes HHSC's written notice of approval of the application for the change of ownership; and clarify the effective date requirements for the license.

The proposed amendment in §551.16(g) establishes the expiration date of the temporary change of ownership license.

The proposed amendment in §551.16(h) allows HHSC, in its sole discretion, to extend a temporary change of ownership license for a term of 90 days at a time based upon extenuating circumstances. This change gives HHSC the flexibility to extend the duration of the license to allow HHSC additional time to perform the health inspection of the facility.

The proposed amendments in §551.16(i) state that HHSC conducts a health inspection after HHSC issues a temporary change of ownership license and before issuance of a three-year license.

The proposed amendments in §551.16(j) state that HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection of the facility after issuing a temporary change of ownership license.

The proposed amendments in §551.16(k) specify the requirements for HHSC to determine whether to issue the temporary change of ownership license holder a three-year license. Among other requirements, the facility must pass the health inspection described in the rule.

The proposed amendments change the lettering of current §551.16(h) to new §551.16(l) and current §551.16(i) to new §551.16(m) to account for the addition of a new §551.16(a).

The proposed amendment to §551.214 inserts "legally authorized representative (LAR)" to correct a clerical error.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and

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

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed amendments do not require changes to current business practices or impose costs or fees on those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be an anticipated decrease in the amount of time for a license to be issued in the incoming owner's name based on a change of ownership. The issuance of a temporary change of ownership license in the incoming owner's name allows the new owner to begin operational processes while HHSC is completing the health inspection of the facility. These operational processes include entering contracts for leasing, lending, and Medicaid. Subsequently, the new owner can begin Medicaid billing and receive funding sooner, which will have a positive impact on the residents being served by the facility.

Another anticipated public benefit is a decrease in the transition time for the change of ownership, which will help both the outgoing and incoming owners of a facility in terms of business processes.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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

indicate "Comments on Proposed Rule 21R132" in the subject line.

SUBCHAPTER B. APPLICATION PROCEDURES

26 TAC §551.16

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, operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008, which requires the Executive Commissioner to adopt rules related to the administration and implementation of Chapter 252, Intermediate Care Facilities for Individuals with an Intellectual Disability.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §252.008.

§551.16. Change of Ownership and Notice of Changes.

(a) For purposes of this section, a temporary change of ownership license is a temporary license issued to an applicant who proposes to become the new operator of a facility that exists on the date the application is submitted.

(b) ~~(a)~~ A license holder may not transfer its license. The applicant (new license holder) [If a change of ownership occurs, the license holder's license becomes invalid on the date of the change of ownership. The prospective new license holder] must obtain a temporary change of ownership license followed by an initial three-year license in accordance with ~~subsection (b) of~~ this section. When the Texas Health and Human Services Commission (HHSC) [~~;~~ however, the original license holder remains responsible until HHSC] approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the effective date of the change of ownership indicated in the change of ownership application. Between the effective date of the change of ownership and the issuance of the temporary change of ownership license, the current license holder remains responsible under its license; however, the applicant may operate a facility on behalf of the current license holder during such period of time.

(c) ~~(b)~~ The applicant [A prospective new license holder] must submit to HHSC through the online portal [the Texas Health and Human Services Commission (HHSC)]:

(1) a complete application for a license in accordance with HHSC instructions and [through the online portal under] §551.11 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information [through the online portal];

(2) the application fee, in accordance with §551.19 of this subchapter (relating to License Fees); and

(3) a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 [~~;~~ written notice] from the applicant and the facility's current [existing] license holder of intent to transfer operation of the facility from the current license holder to the applicant beginning on the change of ownership effective [a] date specified on the change of ownership [by the applicant], unless waived in accordance with subsection (d) of this section.

(d) ~~(c)~~ To avoid a facility operating without a license, an applicant [a prospective license holder] must submit all items in subsection

(c) ~~(b)~~ of this section at least 30 days before the anticipated date of the change of ownership in accordance with HHSC instructions, unless the 30-day notice requirement is waived in accordance with subsection (e) of this section.

(e) ~~(d)~~ HHSC may waive the 30-day [The] notice required by subsection (d) ~~(b)(3)~~ of this section [may be waived by HHSC] if HHSC determines that the applicant presents [prospective license holder presented] evidence showing that circumstances prevented the submission of the items in subsection (c) of this section at least 30 days before the anticipated date of the change of ownership [notice] and that not waiving the 30-day requirement [notice] would create a threat to resident welfare or health and safety.

(f) Upon HHSC approval of the items in subsection (c) of this section, HHSC issues a temporary change of ownership license to the applicant if HHSC finds that the applicant, all controlling persons, and all person disclosed in the application satisfy the requirements in §§551.11(d) of this subchapter, 551.13 of this subchapter (relating to Applicant Disclosure Requirements), and 551.17 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

(1) The issuance of a temporary change of ownership license constitutes HHSC's official written notice to the facility of the approval of the application for a change of ownership.

(2) The effective date of the temporary change of ownership license is the date requested in the application and cannot precede the date the application is received by HHSC through the online portal.

(g) A temporary change of ownership license expires on the earlier of:

(1) 90 days after its effective date or the last day of any extension HHSC provides in accordance with subsection (h) of this section; or

(2) the date HHSC issues a three-year license in accordance with subsection (k) of this section.

(h) HHSC, in its sole discretion, may extend the temporary change of ownership license for a term of 90 days at a time based on extenuating circumstances.

(i) ~~(e)~~ HHSC conducts an on-site health inspection to verify compliance with the licensure requirements after [before] issuing a temporary change of ownership license [as a result of a change of ownership]. HHSC may conduct a desk review instead of an on-site health inspection after [before] issuing a temporary change of ownership license [as a result of a change of ownership] if:

(1) less than 50 percent of the direct or indirect ownership interest in the former license holder changed, when compared to the new license holder; or

(2) every owner with a disclosable interest in the new license holder had a disclosable interest in the former license holder.

(j) ~~(f)~~ HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection after [before] issuing a temporary change of ownership license [as a result of a change of ownership].

(k) If an applicant, all controlling persons, and all person disclosed in the application satisfy the requirements of §§551.11(d), 551.13, and 551.17 of this subchapter, and the facility passes the change of ownership health inspection as described in subsection (i) of this section, HHSC issues a three-year license.

(g) The effective date of the license is the same date as the effective date of the change of ownership and cannot precede the date the application was received by HHSC through the online portal.

(l) [(h)] If a license holder changes its name but does not undergo a change of ownership, the license holder must notify HHSC and submit documentation evidencing a legal name change by submitting an application through the online portal. On receipt of the notice and documentation, HHSC reissues the current license in the license holder's new name.

(m) [(+)] If a license holder adds an owner with a disclosable interest, but the license holder does not undergo a change of ownership, the license holder must notify HHSC of the addition no later than 30 days after the addition of the owner by submitting an application through the online portal.

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 May 3, 2022.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 19, 2022

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



SUBCHAPTER G. ABUSE, NEGLECT, AND EXPLOITATION; COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

26 TAC §551.214

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, operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008, which requires the Executive Commissioner to adopt rules related to the administration and implementation of Chapter 252, Intermediate Care Facilities for Individuals with an Intellectual Disability.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §252.008.

§551.214. *Protection of Residents After Report of Abuse, Neglect, and Exploitation.*

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

(d) Within 24 hours of making or learning of an allegation of abuse, neglect, or exploitation, the facility must notify the alleged victim and the victim's legally authorized representative (LAR) that an allegation of abuse, neglect, or exploitation involving the victim has been made and reported. If the facility cannot notify the LAR in person or by phone, the facility must notify the LAR by certified mail with a return receipt requested.

(e) (No change.)

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER B. LICENSING

26 TAC §553.35

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §553.35, concerning Change of Ownership and Notice of Changes.

BACKGROUND AND PURPOSE

The purpose of the proposal is to authorize HHSC to issue a temporary change of ownership license in the name of the new owner of an assisted living facility (ALF) and to complete a health inspection while the new owner holds this temporary change of ownership license. The proposed amendment also authorizes HHSC to extend the duration of the temporary change of ownership license to allow HHSC additional time to perform the health inspection of the ALF.

The proposed amendments also allow HHSC, under certain circumstances, to waive the requirement for an applicant to submit a complete application at least 30 days before the anticipated date of the change of ownership.

The proposed amendments also update the licensure process relating to change of ownership and addresses the process for a license holder to change its name when the facility does not undergo a change of ownership and makes non-substantive changes to add clarity, remove redundant language, change the lettering of the subsections to account for the addition of provisions, reorganize some provisions so that related topics are grouped together to facilitate navigation within the rule, and make edits to improve readability.

SECTION-BY-SECTION SUMMARY

The proposed amendment in subsection (a) adds a new definition for the term "temporary change of ownership license" to mean a temporary license issued to an applicant who proposes to become the new operator of a facility that exists on the date the application is submitted. The amendment clarifies the meaning of the new term "temporary change of ownership license" as used in the rule.

The proposed amendments in subsection (b) require the applicant to obtain a temporary change of ownership license followed by an initial three-year license in accordance with the section; explain that when HHSC approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the change of ownership's effective date indicated in the application; and explain that between the change of ownership's effective date and the issuance of the temporary change of ownership license, the facility's current license holder remains

responsible under its license, although the applicant may operate the facility on behalf of the current license holder during this period of time.

The proposed amendments in subsection (c) explain what the applicant is required to submit and clarify that an applicant may submit an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information through HHSC's online portal, the Texas Unified Licensure Information Portal (TULIP). These changes are consistent with the change of ownership license application processes for other long-term care providers. The proposed amendments also direct the applicant and the facility's current license holder to submit a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 through the online portal. In January 2021, HHSC began requiring the use of this new form for changes of ownerships involving ALFs, nursing facilities (NFs), intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IIDs), day activity and health services (DAHS) facilities, prescribed pediatric extended care centers (PPECCs), and home and community support services agencies (HCSSAs).

The proposed amendments in subsection (d) make minor clarifying changes and remove change of ownership effective date language that is proposed to be moved to subsection (f)(2).

The proposed amendment removes current subsection (d) because it contains language redundant with 26 Texas Administrative Code (TAC) §553.751(a)(7), which authorizes HHSC to assess an administrative penalty against a person who fails to notify HHSC before the effective date of the change of ownership, and to be consistent with other CHOW rules that do not have this redundant language.

The proposed amendment removes language in current subsection (e) because it is redundant with the language proposed to be added in subsection (b) concerning the responsibility of the current ALF license holder while the application for a temporary license is pending.

The proposed amendment in subsection (e) adds a provision for an applicant to seek a waiver of the requirement to submit a complete application at least 30 days before the anticipated date of the change of ownership if HHSC determines certain circumstances have been demonstrated. This change is consistent with the change of ownership license application processes for other long-term care providers. The amendment also specifies the criteria for HHSC to determine whether to grant a waiver of the 30-day requirement.

The proposed amendments in subsection (f) set forth the requirements necessary for HHSC to issue a temporary change of ownership license, authorize HHSC to issue a temporary change of ownership license in the new owner's name and to complete a health inspection while the new owner holds a temporary change of ownership license specify that the issuance of the temporary change of ownership license constitutes HHSC's written notice of approval of the application for the change of ownership, and clarify the effective date requirements for the license.

The proposed amendment in subsection (g) establishes the expiration date of the temporary change of ownership license.

The proposed amendment in subsection (h) allows HHSC, in its sole discretion, to extend a temporary change of ownership license for a term of 90 days at a time based upon extenuating circumstances. This change gives HHSC the flexibility to extend

the duration of the license to allow HHSC additional time to perform the health inspection of the facility.

The proposed amendment in subsection (i) states that HHSC conducts a health inspection after HHSC issues a temporary change of ownership license and before issuance of a three-year license.

The proposed amendment in subsection (j) states that HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection of the facility after issuing a temporary change of ownership license.

The proposed amendments in subsection (k) specify the requirements for HHSC to determine whether to issue the temporary change of ownership license holder a three-year license. Among other requirements, the facility must pass the health inspection described in the rule. In addition, the amendments clarify the effective date of the three-year license.

The proposed amendments in subsections (l), (m), and (n) make edits for clarity.

The proposed amendments add new subsection (o) to outline the process for a license holder to change its name when a change of ownership is not involved. This change is consistent with similar provisions in the change of ownership rules for other long-term care providers.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed amendments do not require changes to current business practices or impose additional costs or fees on those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be an anticipated decrease in the amount of time for HHSC to issue a license in the incoming owner's name based on a change of ownership. The issuance of a temporary change of ownership license in the incoming owner's name allows the new owner to begin operational processes while HHSC is completing the health inspection of the facility, such as entering contracts for leasing, lending, and Medicaid. Subsequently, the new owner can begin Medicaid billing and receive funding sooner, which will have a positive impact on the residents being served by the facility.

Another anticipated public benefit is a decrease in the transition time for the change of ownership, which will help both the outgoing and incoming owners of a facility in terms of business processes.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R132" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §247.025, which requires the Executive Commissioner to adopt rules necessary to implement Chapter 247, Assisted Living Facilities.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code §247.025.

§553.35. *Change of Ownership and Notice of Changes.*

(a) For purposes of this section, a temporary change of ownership license is a temporary license issued to an applicant who proposes to become the new operator of a facility that exists on the date the application is submitted.

(b) [(a)] A license holder may not transfer its license. The applicant (new license holder) must obtain a temporary change of ownership license followed by an initial three-year license in accordance with this section. When the Texas Health and Human Services Commission (HHSC) approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the effective date of the change of ownership indicated in the change of ownership application. Between the effective date of the change of ownership and the issuance of the temporary change of ownership license, the current license holder remains responsible under its license; however, the applicant may operate a facility on behalf of a current license holder during such period of time.

(c) [(b)] An applicant [A prospective license holder] must submit to HHSC through[; via] the online portal[;].

(1) a complete HHSC application for a [an initial] license [based on a change of ownership] in accordance with HHSC instructions and §553.23 of this subchapter (relating to Initial Application Procedures and Requirements) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information[;].

(2) [The] full payment of the fees required in §553.47 of this subchapter (relating to License Fees); and

(3) a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 from the applicant and the facility's current license holder of intent to transfer operation of the facility from the current license holder to the applicant, beginning on the change of ownership effective date specified on the change of ownership application. [must be submitted no less than 30 days before the date the prospective license holder seeks to be licensed based on a change of ownership.]

(d) [(e)] To avoid a facility operating while unlicensed, an applicant must submit all items required by subsection (c) of this section [an application for an initial license based on a change of ownership] at least 30 days before the anticipated date of the change of ownership, unless the 30-day notice requirement is waived in accordance with subsection (e) of this section. [The effective date of the change of ownership cannot precede the date the application is received by the HHSC Licensing and Credentialing Section, Long-term Care Regulation.]

[(d) HHSC may assess an administrative penalty in accordance with Subchapter H, Division 9 of this chapter (relating to Administrative Penalties) against a person who fails to notify HHSC before the effective date of the change of ownership.]

(e) HHSC may waive the 30-day notice required by subsection (d) of this section if HHSC determines that the applicant presents evidence showing that circumstances prevented the submission of the items specified in subsection (c) of this section and that not waiving the notice would create a threat to resident welfare or health and safety.

[(e) Pending HHSC review of the application for an initial license based on a change of ownership, the current license holder must continue to meet all requirements for operation of the facility.]

(f) Upon HHSC approval of the items specified in subsection (c) of this section, HHSC issues a temporary change of ownership license to the applicant if HHSC finds that the applicant, all controlling persons, and all persons disclosed in the application satisfy the require-

ments in §553.17 of this subchapter (relating to Criteria for Licensing), except for §553.17(c) and (d).

(1) The issuance of a temporary change of ownership license constitutes HHSC's official written notice to the facility of the approval of the application for a change of ownership.

(2) The effective date of the temporary change of ownership license is the date requested in the application and cannot precede the date the application is received by HHSC through the online portal.

(g) A temporary change of ownership license expires on the earlier of:

(1) 90 days after its effective date or the last day of any extension HHSC provides in accordance with subsection (h) of this section; or

(2) the date HHSC issues a three-year license in accordance with subsection (k) of this section.

(h) HHSC, in its sole discretion, may extend a temporary change of ownership license for a term of 90 days at a time based upon extenuating circumstances.

(i) ~~[(#)]~~ HHSC staff conduct an on-site health inspection to verify compliance with the licensure requirements after [before] issuing a temporary change of ownership license [based on a change of ownership]. HHSC may conduct a desk review instead of an on-site health inspection after issuing a temporary change of ownership if [HHSC determines that the prospective license holder will have a new tax identification number and]:

(1) less than 50 percent of the direct or indirect ownership interest in the former [current] license holder differs from that of the new [prospective] license holder; or

(2) every owner with a disclosable interest in the new [prospective] license holder has a disclosable interest in the former [current] license holder.

(j) ~~[(g)]~~ HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection of the facility after issuing a temporary change of ownership license [to determine if the facility meets the applicable NFPA 101 and other physical plant requirements in Subchapter D of this chapter (relating to Facility Construction); and, as applicable, §553.311 of this chapter (relating to Physical Plant Requirements in Alzheimer's Units) before issuing a license based on a change of ownership].

(k) ~~[(h)]~~ If the applicant, all controlling persons, and all persons disclosed in the application satisfy the requirements of §553.17 of this subchapter, except for §553.17(c)(1)(A) - (C), for a license, and the facility passes the change of ownership health inspection as described in subsection (i) of this section, HHSC issues a three-year [the] license within 30 days after HHSC determines that the applicant and the facility have met the licensure requirements of this section. The effective date of the three-year license is the same date as the effective date of the change of ownership and cannot precede the date the application was received by HHSC through the online portal. [The issuance of a license constitutes HHSC's official written notice to the facility of the approval of the application for a change of ownership.]

(l) ~~[(i)]~~ HHSC may deny an application for a change of ownership if the applicant, controlling person, or any person disclosed in the application [required to submit background and qualification information] fails to meet the criteria for a license established in §553.17 of this subchapter [(relating to Criteria for Licensing)].

(m) ~~[(j)]~~ If HHSC denies an application for a temporary change of ownership license or a three-year license [an initial license

based on a change of ownership], HHSC sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with HHSC [Texas Health and Human Services Commission] rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(n) ~~[(k)]~~ If a license holder that is not a publicly traded company adds an owner with a disclosable interest, but the license holder does not undergo a change of ownership, the license holder must notify HHSC [via the online portal] no later than 30 days after the addition of the owner by submitting an application through the online portal.

(o) If a license holder changes its name but does not undergo a change of ownership, the license holder must notify HHSC and submit documentation evidencing a legal name change by submitting an application through the online portal. On receipt of the notice and documentation, HHSC reissues the current license in the license holder's new name.

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 May 3, 2022.

TRD-202201746

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 19, 2022

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



CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

SUBCHAPTER B. APPLICATION PROCEDURES

26 TAC §559.16

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §559.16, concerning Change of Ownership and Notice of Changes.

BACKGROUND AND PURPOSE

The purpose of the proposal is to authorize HHSC to issue a temporary change of ownership license in the name of the new owner of a day activity and health service (DAHS) facility and to complete a health inspection of the facility while the new owner holds this temporary change of ownership license. The proposal also authorizes HHSC to extend the duration of the temporary change of ownership license to allow HHSC additional time to perform the health inspection of the DAHS facility.

The proposed amendments also update the licensure process to reflect the transition from paper applications to the use of the online licensure portal called the Texas Unified Licensure Information Portal (TULIP) and to clarify other processes relating to licensure and change of ownership.

The proposed amendments also address the process for a license holder to change its name when the facility does not undergo a change of ownership, and make non-substantive changes to add clarity; correct obsolete references from the

legacy agency, Department of Aging and Disability Services (DADS), to HHSC; update rule references in response to the administrative transfer of the chapter from 40 Texas Administrative Code (TAC), Chapter 98, to 26 TAC, Chapter 559; change the lettering of the subsections to account for the addition of provisions; reorganize some provisions so that related topics are grouped together to facilitate navigation within the rule; and make edits to improve readability.

SECTION-BY-SECTION SUMMARY

The proposed amendment in subsection (a) defines the term "temporary change of ownership license" to mean a temporary license issued to an applicant who proposes to become the new operator of a DAHS facility that exists on the date the application is submitted. This proposed definition clarifies the meaning of the new term "temporary change of ownership license" as used in the rule.

The proposed amendments in subsection (b) require the applicant to obtain a temporary change of ownership license followed by an initial three-year license in accordance with the section; explain that when HHSC approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the change of ownership's effective date indicated in the application; and explain that between the change of ownership's effective date and the issuance of the temporary change of ownership license, the facility's current license holder remains responsible under its license, although, the applicant may operate a facility on behalf of the current license holder during this period.

The proposed amendments in subsection (c) explain what the applicant is required to submit through HHSC's online portal TULIP. The amendments also direct the applicant and the facility's current license holder to submit a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 through the online portal. In January 2021, HHSC began requiring the use of this new form for changes of ownerships involving assisted living facilities, nursing facilities, intermediate care facilities for individuals with an intellectual disability or related conditions, DAHS facilities, prescribed pediatric extended care centers, and home and community support services agencies.

The proposed amendments in subsection (d) remove a reference to an outdated rule section in repealed 40 TAC, Chapter 98; and remove outdated DADS application process language in current subsections (b) and (c).

The proposed amendment in subsection (e) requires an applicant to seek a waiver of the requirement to submit a complete application at least 30 days before the anticipated date of the change of ownership if HHSC determines certain circumstances have been demonstrated. This change is consistent with the change of ownership license application processes for other long-term care providers. The amendment also specifies the criteria for HHSC to determine whether to grant a waiver of the 30-day requirement.

The proposed amendments in subsection (f) set forth the requirements necessary for HHSC to issue a temporary change of ownership license; authorize HHSC to issue a temporary change of ownership license in the new owner's name and to complete a health inspection while the new owner holds a temporary change of ownership license; specify that the issuance of the temporary change of ownership license constitutes HHSC's written notice

of approval of the application for the change of ownership; and clarify the effective date requirements for the license.

The proposed amendment in subsection (g) establishes the expiration date of the temporary change of ownership license.

The proposed amendment subsection (h) allows HHSC, in its sole discretion, to extend a temporary change of ownership license for a term of 90 days at a time based upon extenuating circumstances. This change gives HHSC the flexibility to extend the duration of the license to allow HHSC additional time to perform the health inspection of the DAHS facility.

The proposed amendments in subsection (i) state that HHSC conducts a health inspection after HHSC issues a temporary change of ownership license and before issuance of a three-year license. The proposed amendments also correct obsolete references from the legacy agency, DADS, to HHSC.

The proposed amendments in subsection (j) state that HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection of the DAHS facility after issuing a temporary change of ownership license. The proposed amendments also correct obsolete references from the legacy agency, DADS, to HHSC.

The proposed amendments in subsection (k) specify the requirements for HHSC to determine whether to issue the temporary change of ownership license holder a three-year license. Among other requirements, the facility must pass the health inspection described in the rule. In addition, the amendments clarify the effective date of the three-year license.

The proposed amendment in subsection (l) corrects obsolete references from the legacy agency, DADS, to HHSC.

The proposed amendments add new subsection (m) to outline the process for a license holder to change its name when a change of ownership is not involved. This change is consistent with similar provisions in the change of ownership rules for other long-term care providers.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not require changes to current business practices or impose additional costs or fees on those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be an anticipated decrease in the amount of time for a license to be issued in the incoming owner's name based on a change of ownership. The issuance of a temporary change of ownership license in the incoming owner's name allows the new owner to begin operational processes while HHSC is completing the health inspection of the facility. These operational processes include entering contracts for leasing, lending, and Medicaid. Subsequently, the new owner can begin Medicaid billing and receive funding sooner, which will have a positive impact on the residents being served by the facility.

Another anticipated public benefit is a decrease in the transition time for the change of ownership, which will help both the outgoing and incoming owners of a facility in terms of business processes.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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

indicate "Comments on Proposed Rule 21R132" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004, which provides that the Executive Commissioner shall adopt rules for implementing Chapter 103, Day Activity and Health Services.

The amendment implements Texas Government Code §531.0055 and Texas Human Resources Code §103.004.

§559.16. Change of Ownership and Notice of Changes.

(a) For purposes of this section, a temporary change of ownership license is a temporary license issued to an applicant who proposes to become the new operator of a facility that exists on the date the application is submitted.

(b) [(a)] A license holder may not transfer its license. The applicant (new license holder) must obtain a temporary change of ownership license followed by an initial three-year license in accordance with this section. When the Texas Health and Human Services Commission (HHSC) approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the effective date of the change of ownership indicated in the change of ownership application. Between the effective date of the change of ownership and the issuance of the temporary change of ownership license, the existing license holder remains responsible under its license; however, the applicant may operate a facility on behalf of the current license holder during such period of time.

(c) The applicant must submit to HHSC through the online portal:

(1) a complete application for a license in accordance with HHSC instructions and §559.11 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §559.21 of this subchapter (relating to License Fees); and

(3) a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 from the applicant and the facility's current license holder of intent to transfer operation of the facility from the current license holder to the applicant, beginning on the change of ownership effective date specified on the change of ownership application.

(d) [(b)] To avoid a facility operating without a license, an applicant [gap in the license because of a change in ownership of the facility, a prospective license holder] must submit all items required by subsection (c) of this section [to DADS a complete application for a license under §98.11 of this title (relating to Criteria for Licensing)] at least 30 days before the anticipated date of a change of ownership, unless the 30-day notice requirement is waived in accordance with subsection (e) of this section. [The applicant must meet all requirements for a license. If the applicant has filed a timely and sufficient application for a license and otherwise meets all requirements for a license, DADS will issue the applicant a license effective on the date of the change of ownership. DADS considers an applicant has filed a timely and sufficient application for a license if the applicant:]

~~[(1) submits a complete application to DADS, and DADS receives that complete application at least 30 days before the anticipated date of change of ownership;]~~

~~[(2) submits an incomplete application to DADS with a letter explaining the circumstances that prevented the inclusion of the missing information, and DADS receives the incomplete application and letter at least 30 days before the anticipated date of change of ownership; or]~~

~~[(3) submits an application to DADS, and DADS receives the application by the date of change of ownership, and the applicant proves to DADS satisfaction that the health and safety of the facility clients required an emergency change of ownership.]~~

~~[(e) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in DADS Licensing and Credentialing Section, Regulatory Services Division, within 15 days after the postmark.]~~

~~(e) HHSC may waive the 30-day notice required in subsection (d) of this section if HHSC determines that the applicant presents evidence showing that circumstances prevented the submission of the items in subsection (c) of this section at least 30 days before the anticipated change of ownership and that not waiving the 30-day requirement would create a threat to client health and safety.~~

~~(f) Upon HHSC approval of the items specified in subsection (c) of this section, HHSC issues a temporary change of ownership license to the applicant if HHSC finds that the applicant, all controlling persons, and all persons disclosed in the application satisfy all applicable requirements in §559.11 of this subchapter, §559.13 of this subchapter (relating to Applicant Disclosure Requirements), and §559.19 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).~~

~~(1) The issuance of a temporary change of ownership license constitutes HHSC's official written notice to the facility of the approval of the application for a change of ownership.~~

~~(2) The effective date of the temporary change of ownership license is the date requested in the application and cannot precede the date the application is received by HHSC through the online portal.~~

~~(g) A temporary change of ownership license expires on the earlier of:~~

~~(1) 90 days after its effective date or the last day of any extension HHSC provides in accordance with subsection (h) of this section; or~~

~~(2) the date HHSC issues a three-year license in accordance with subsection (k) of this section.~~

~~(h) HHSC, in its sole discretion, may extend a temporary change of ownership license for a term of 90 days at a time based upon extenuating circumstances.~~

~~(i) [(d)] HHSC [DADS] conducts an on-site health inspection to verify compliance with the licensure requirements after [before] issuing a temporary change of ownership license [as a result of a change of ownership]. HHSC [DADS] may conduct a desk review instead of an on-site health inspection after [before] issuing a temporary change of ownership license [as a result of a change of ownership] if:~~

~~(1) less than 50 percent of the direct or indirect ownership interest of the former license holder changed, when compared to the new license holder; or~~

~~(2) every person with a disclosable interest in the new license holder had a disclosable interest in the former license holder.~~

~~(j) [(e)] HHSC [DADS], in its sole discretion, may conduct an on-site Life Safety Code inspection after [before] issuing a temporary change of ownership license [as a result of a change of ownership].~~

~~(k) If the applicant, all controlling persons, and all persons disclosed in the application satisfy all applicable requirements of §559.11, §559.13, and §559.19 of this subchapter for a license, and the facility passes the change of ownership health inspection as described in subsection (i) of this section, HHSC issues a three-year license. The effective date of the three-year license is the same date as the effective date of the change of ownership and cannot precede the date the application was received by HHSC through the online portal.~~

~~(l) [(f)] If a license holder adds an owner with a disclosable interest, but the license holder does not undergo a change of ownership, the license holder must notify HHSC [DADS] of the addition no later than 30 days after the addition of the owner.~~

~~(m) If a license holder changes its name but does not undergo a change of ownership, the license holder must notify HHSC and submit documentation evidencing a legal name change by submitting an application through the online portal. On receipt of the notice and documentation, HHSC reissues the current license in the license holder's new name.~~

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.115, concerning What programs regulated by other governmental entities are exempt from Licensing regulation; §745.139, concerning What will Licensing do if I operate a combination of exempt and regulated programs; and §745.8605, concerning When can Licensing recommend or impose an enforcement action against my operation, in Title 26, Texas Administrative Code, Chapter 745, Licensing.

BACKGROUND AND PURPOSE

The purpose of this proposal is to amend rules in Chapter 745 that address the subject matter of an emergency rule and an emergency rule amendment adopted in July 2021, relating to operations that are exempt from licensure and regulation by HHSC.

The emergency rule and rule amendment were adopted to comply with Governor Abbott's direction in a May 31, 2021, proclamation declaring a state of disaster in certain Texas counties and for affected state agencies. In this proclamation, Governor Abbott directed HHSC to discontinue state licensing of certain child-care facilities that provide care or shelter to undocumented immigrants. The Governor suspended §42.046 and §42.048 of the Texas Human Resources Code and all other relevant laws to the extent necessary for HHSC to comply with this direction. Based on the declared disaster, HHSC found that imminent peril

to the public health, safety, and welfare of the state required immediate adoption of emergency rules. HHSC adopted an emergency amendment to clarify that a program that provides care exclusively to unlawfully present individuals is exempt from licensure and regulation by HHSC. HHSC also adopted an emergency rule to require a General Residential Operation (GRO) either to cease providing care or shelter to an unlawfully present individual by August 30, 2021, or to surrender its license to HHSC. The emergency rules also provide that child-care programs that are exempt from licensing and regulation by HHSC must be operated separately from GROs that are licensed or certified by HHSC and outlines the enforcement actions HHSC may take if a GRO provides care or shelter to an unlawfully present individual after August 30, 2021.

These rules substantially adapt the content of the emergency rules into regular rules. Accordingly, the proposed amendments reflect the intent and content of the emergency rules but have been updated to (1) make the licensure exemption outlined in the emergency rule amendment ongoing; and (2) incorporate the enforcement components in the emergency rule into CCR's existing enforcement framework.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.115 adds an exemption from licensure and regulation by HHSC for a program that provides care exclusively to unlawfully present individuals.

The proposed amendment to §745.139 separates the rule into subsections (a) and (b) to clarify that the rule does not apply to an exempt program whose exemption is described in proposed §745.115(1)(B).

The proposed amendment to §745.8605 adds provision of care to an unlawfully present individual to the list of actions against which CCR can recommend or impose an enforcement action.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

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

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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; and (2) do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that comply with the Governor's May 31, 2021, Disaster Proclamation, as well as any similar future proclamation.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any additional costs or fees on persons required to comply with the rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R031" in the subject line.

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION

DIVISION 2. EXEMPTIONS FROM REGULATION

26 TAC §745.115, §745.139

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§745.115. *What programs regulated by other governmental entities are exempt from Licensing regulation?*

The following programs and facilities are exempt from our regulation:
Figure: 26 TAC §745.115
[Figure: 26 TAC §745.115]

§745.139. *What will Licensing do if I operate a combination of exempt and regulated programs?*

(a) If the programs are separate, each program that meets the criteria for an exemption is exempt. If they are not separate, then they are all subject to our regulation, unless the exempt program meets the exemption described in §745.115(1)(B) of this division.

(b) To demonstrate that the programs are separate, you must show that the programs:

(1) Have separate caregivers or have caregivers that do not provide care to more than one program at the same time; and

(2) Do not use the same building or areas at the same time, except that the programs may share restrooms and indoor/outdoor activity areas if you have a written plan regarding how caregivers from each program will supervise children using shared spaces.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



SUBCHAPTER L. ENFORCEMENT ACTIONS

DIVISION 1. OVERVIEW OF ENFORCEMENT ACTIONS

26 TAC §745.8605

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§745.8605. *When can Licensing recommend or impose an enforcement action against my operation?*

We can recommend or impose an enforcement action any time we find one of the following:

(1) You supplied false information or made false statements during the application process;

(2) You falsified or permitted to be falsified any record or other materials that are required to be maintained by minimum standards;

(3) You do not have an acceptable reason for not having the required liability insurance in §745.251 of this chapter (relating to What are the acceptable reasons not to have liability insurance?);

(4) You do not pay the required fees;

(5) A single serious deficiency of a minimum standard, rule, or statute, including a finding of abuse or neglect or background check matches;

(6) Several deficiencies that create an endangering situation;

(7) A repetition or pattern of deficiencies;

(8) An immediate threat or danger to the health or safety of children;

(9) You or someone working at your operation refuses, prevents, or delays our ability to conduct an inspection or investigation, or the ability of the Department of Family and Protective Services to conduct an investigation of an allegation of abuse, neglect, or exploitation;

(10) A failure to timely report necessary changes to Licensing;

(11) A failure to comply with any restrictions or limits placed on your permit;

(12) A failure to meet the terms and conditions of your probation;

(13) A failure to comply with minimum standards, rules, or statutes at the end of the suspension period;

(14) A failure to submit information to us within two days of a change in your controlling persons, as required in §745.903 of this chapter (relating to When and how must an operation submit controlling-person information to Licensing?);

(15) You fail to correct by the compliance date any deficiency that is not pending due process;

(16) You apply for a permit after we designate you as a controlling person, but before the designation is sustained;

(17) It is within five years since your designation as a controlling person has been sustained;

(18) You apply for a permit to operate a child care operation, and you are barred from operating a child care operation in another state;

(19) You apply for a permit to operate a child care operation, and your permit to operate a child care operation in another state was revoked;

(20) You apply for a permit to operate a child care operation, and your permit to operate was revoked, suspended, or terminated by another Texas state agency as outlined in Texas Government Code,

Chapter 531, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions);

(21) You apply for a permit to operate a child care operation and:

(A) You fail to comply with public notice and hearing requirements as set forth in §745.277 of this chapter (relating to What will happen if I fail to comply with public notice and hearing requirements?); or

(B) The results of the public hearing meet one of the criteria set forth in §745.340(b) of this chapter (relating to What factors will we consider when evaluating an application for a permit?).

(22) You operate a child care operation, and that operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides in good faith, information relating to the misuse of restraint or seclusion at the operation;

(23) A reason set forth in Texas Human Resources Code, §42.078;

(24) A failure to pay an administrative penalty under Texas Human Resources Code, §42.078;

(25) A failure to follow conditions or restrictions placed on a person's presence at an operation; [øf]

(26) During the application process you were exempt from the public notice and hearing requirements under §745.273(b) of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?), but you never provide or cease to provide trafficking victim services and fail to meet the public notice and hearing requirements; or

(27) You provide care to an unlawfully present individual in violation of Chapter 748, Subchapter B, Division 3 of this title (relating to Care of Unlawfully Present Individuals).

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §748.7, concerning How are these regulations applied to family residential centers; and new §748.81, concerning What do certain terms mean in this division, §748.83, concerning May I provide care to or shelter an unlawfully present individual, and §748.85, concerning What are the requirements if I operate my general residential operation while an exempt program separately provides care for an unlawfully present individual,

in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

BACKGROUND AND PURPOSE

The purpose of this proposal is to amend a rule and add new rules in Chapter 748 that address the subject matter of an emergency rule adopted in July 2021, relating to providing care or shelter to unlawfully present individuals in a General Residential Operation (GRO) licensed by HHSC.

The emergency rule was adopted to comply with Governor Abbott's direction in a May 31, 2021, proclamation declaring a state of disaster in certain Texas counties and for affected state agencies. In this proclamation, Governor Abbott directed HHSC to discontinue state licensing of certain child-care facilities that provide care or shelter to undocumented immigrants. The Governor suspended §42.046 and §42.048 of the Texas Human Resources Code and all other relevant laws to the extent necessary for HHSC to comply with this direction. Based on the declared disaster, HHSC found that imminent peril to the public health, safety, and welfare of the state required immediate adoption of emergency rules. Consequently, HHSC adopted an emergency rule to require a GRO either to cease providing care or shelter to an unlawfully present individual by August 30, 2021, or to surrender its license to HHSC. The emergency rules also provide that child-care programs that are exempt from licensing and regulation by HHSC must be operated separately from GROs that are licensed or certified by HHSC and outlines the enforcement actions HHSC may take if a GRO provides care or shelter to an unlawfully present individual after August 30, 2021.

These rules substantially adapt the content of the emergency rules into regular rules. Accordingly, the proposed rules and amendment reflect the intent and content of the emergency rule but have been updated to remove timeframes for notifications and permit relinquishment that have since expired.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.7 adds subsection (f) to clarify that the rule applies only as long as a GRO is authorized to provide care for children who are unlawfully present in the United States and in the custody of the federal government.

Proposed new §748.81 adds definitions for the terms "exempt program" and "unlawfully present individual" used in proposed new Division 3, relating to Care of Unlawfully Present Individuals.

Proposed new §748.83 provides that a GRO may not provide care or shelter to an unlawfully present individual. However, this rule also allows the provider to provide care for an unlawfully present individual at an exempt program that operates separately from the GRO.

Proposed new §748.85 specifies the requirements a GRO must follow if operating while an exempt program separately cares for an unlawfully present individual, including (1) notifying CCR in writing; (2) ensuring that the exempt program has separate caregivers or caregivers that do not provide care for both programs simultaneously; (3) ensuring that the exempt program does not use an area of the building or grounds except under certain circumstances specified in a written plan that includes supervision of children in the shared space; and (4) submitting a written plan to CCR detailing how the licensed GRO will operated separately from the exempt program.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

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

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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; and (2) do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that comply with the Governor's May 31, 2021, Disaster Proclamation, as well as any similar future proclamation.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because the proposal does not impose any additional costs or fees on persons required to comply with the rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CRRRules@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 faxing or emailing comments, please indicate "Comments on Proposed Rule 22R031" in the subject line.

SUBCHAPTER A. PURPOSE AND SCOPE

26 TAC §748.7

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§748.7. How are these regulations applied to family residential centers?

(a) Definition. A family residential center is one that meets all of the following requirements:

(1) The center is operated by or under a contract with United States Immigration and Customs Enforcement;

(2) The center is operated to enforce federal immigration laws;

(3) Each child at the center is detained with a parent or other adult family member, who remains with the child at the center; and

(4) A parent or family member with a child provides the direct care for the child except for specific circumstances when the child is cared for directly by the center or another adult in the custody of the center.

(b) Classification. A family residential center is a general residential operation (GRO) and must comply with all associated requirements for GROs, unless the family residential center is approved for an individual waiver or variance or an exception is provided in this section. The department is responsible for regulating the provision of childcare as authorized by Chapters 40 and 42, Texas Human Resources Code and Chapter 261, Texas Human Resources Code. The department does not oversee requirements that pertain to other law, including whether the facilities are classified as secure or in compliance with any operable settlement agreements or other state or federal restrictions.

(c) Exceptions. A family residential center is not required to comply with all terms of the following Minimum Standards:

(1) the limitation of room occupants to four in §748.3357 of this title (relating to What are the requirements for floor space in a bedroom used by a child?), except that nothing in this exception shall be construed to require fewer than 60 square feet per child;

(2) the limitation on a child sharing a bedroom with an adult in §748.3361 of this title (relating to May a child in care share a bedroom with an adult?), if the bedroom is being shared in order to allow a child to remain with the child's parent or other family member; and

(3) the limitations on children of the opposite gender sharing a room in §748.3363 of this title (relating to May children of opposite genders share a bedroom?), except that nothing in this exception shall be construed to permit children from different families who are over the age of six and members of the opposite gender to share a bedroom.

(d) Limitation of exception. Notwithstanding subsection (c) of this section, and as further described in §745.8313 of this title (relating to Is a waiver or variance unconditional?), the department retains the authority for placing conditions on the scope of the exceptions authorized for a family residential center, including conditions related to limiting occupancy in accordance with fire safety standards, limitations related to allowing children and adults of the opposite gender to occupy the same room only if they are part of the same family, and any other limitation determined by the department to be necessary to the health, safety, or welfare of children in care.

(e) Division of responsibility. In addition to the application materials described in §745.243(6) of this title (relating to What does a completed application for a permit include?), an applicant for a license under this section must submit the policies, procedures, and any other documentation that the department deems necessary to clarify the division of supervisory and caretaking responsibility between employees of the facility and the parents and other adult family members who are housed with the children. The department must approve the documentation during the application process and any subsequent amendments to the policies and procedures.

(f) Applicability. This rule is applicable only to the extent that a GRO may provide care to children who are unlawfully present in the United States and in the custody of the federal government.

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-202201717

Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 3. CARE OF UNLAWFULLY PRESENT INDIVIDUALS

26 TAC §§748.81, 748.83, 748.85

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new rules affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§748.81. What do certain terms mean in this division?

The terms used in this division have the following meanings:

(1) Exempt program--A child-care program that is exempt from or otherwise not subject to regulation as a child-care operation by the Texas Health and Human Services Commission (HHSC) under Chapter 42, Texas Human Resources Code (HRC), and Chapter 745, Subchapter C of this title (relating to Operations that are Exempt from Regulation).

(2) Unlawfully present individual--An individual who is neither a citizen nor has a right to be present in the United States under the Immigration and Nationality Act or accompanying regulations or decisions, who is in the custody of the federal government. This term includes a child who has no lawful immigration status in the United States and:

(A) With respect to whom, there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody, as described in 6 U.S. Code §279(g)(2); or

(B) Who is detained with a parent or other adult family member who is not lawfully present in the United States.

§748.83. May I provide care to or shelter an unlawfully present individual?

You may not provide care or shelter to an unlawfully present individual at your general residential operation. However, you may operate an exempt program that provides care for an unlawfully present individual separately from your general residential operation.

§748.85. What are the requirements if I operate my general residential operation while an exempt program separately provides care for an unlawfully present individual?

(a) If you provide care for an unlawfully present individual at an exempt program while you operate your general residential operation:

(1) You must notify Licensing in writing;

(2) You must ensure that the exempt program:

(A) Has separate caregivers from your operation or caregivers that do not provide care at your operation while they care for children at the exempt program; and

(B) Does not use an area of your building or grounds at the same time that your operation is using the area, except that the exempt program and your operation may share restrooms and indoor and outdoor activity areas under a written plan regarding how caregivers from your operation and the exempt program will supervise the children in the shared space.

(b) You must submit to Licensing a written plan for how the exempt program will operate separately from your general residential operation, as required by subsection (a)(2) of this section.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §132.17

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 Texas Administrative Code §132.17, concerning Denial, Dispute, and Payment of Death Benefits. Section 132.17 implements Texas Labor Code §§408.181 and 409.021.

EXPLANATION. Amending §132.17 is necessary to clarify an insurance carrier's deadlines to file disputes on eligibility of death benefits under Labor Code §408.181, and on compensability of a death claim under Labor Code §409.021. The amendments to §132.17(i) clarify that the timeframes to pay or dispute are based on the date of injury and make editorial changes to avoid confusion.

The amendments also correct grammar errors in the current rule text and update rule language to conform the section to the agency's current style. Examples of these amendments include changing "shall" to "must," updating "Commission" to "division," and adding "insurance" before "carrier."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Hearings Allen Craddock has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statutes. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Dr. Craddock does not anticipate any measurable effect on local employment or local economies as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Dr. Craddock expects that enforcing and administering the proposed amend-

ments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.181 and 409.021 and are current and accurate, which promote transparent and efficient regulation.

Dr. Craddock expects that the proposed amendments will not increase the cost to comply with Labor Code §§408.181 and 409.021 because they do not impose requirements beyond those in the statutes. Labor Code §408.181 requires an insurance carrier to pay death benefits to legal beneficiaries if the employee's compensable injury results in death. Labor Code §409.021 requires an insurance carrier to provide written notice to DWC when the insurance carrier initiates death benefits. As a result, the cost associated with the insurance carrier's denial, dispute, and payment of death benefits does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments make editorial changes and updates for plain language and agency style only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. DWC has also determined that removing obsolete requirements reduces costs to regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that 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 agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments make editorial changes and updates for plain language and agency style only. They do not change the people the rule affects or impose additional costs.

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

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on June 24, 2022. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments and received by DWC no later than 5:00 p.m., Central time, on June 15, 2022. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §132.17 under Labor Code §§401.011, 402.00111, 402.00116, 402.061, 408.181 and 409.021.

Labor Code §401.011 provides general definitions used in the Texas Workers' Compensation Act, including "death benefits," and "insurance carrier."

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §408.181 provides that an insurance carrier must pay death benefits to the legal beneficiaries if a compensable injury results in an injured employee's death.

Labor Code §409.021 provides that an insurance carrier has the right to contest the compensability of an injury in a workers' compensation case.

CROSS-REFERENCE TO STATUTE. Section 132.17 implements Labor Code §408.181, enacted by HB 7, 79th Legislature, Regular Session (2005). Section 132.17 implements Labor Code §409.121 enacted by SB 2551, 86th Legislature, Regular Session (2019). Section 132.17 references 28 TAC §124.2, which implements Labor Code §409.021. Section 132.17 references 28 TAC §122.100, which implements Labor Code §409.007. Section 132.17 references 28 TAC §§132.2-132.6, which implement Labor Code §408.182.

§132.17. Denial, Dispute, and Payment of Death Benefits.

(a) On [Upon] being notified of a death resulting from an injury, the insurance carrier must [(earrier) shall]:

(1) investigate whether the death was a result of a compensable [the] injury; or [and,]

(2) if the injury and death were reported to the insurance carrier separately, investigate the compensability of the death, [if the carrier has not already done so in compliance with §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) due to the injury being reported separately, conduct an investigation relating to the compensability of the death,] the insurance carrier's li-

ability for the death, and the accrual of benefits, in accordance with §124.3 of this title (relating to Investigation of an Injury and Notice of Denial or Dispute).

(b) To conduct its investigation, the insurance [The] carrier has [shall have] 60 days from the date it was notified [notification] of the death or [from notice of the] injury that resulted in the death, , whichever date is later [(whichever is greater) to conduct its investigation-].

(c) [(b)] If the insurance carrier believes that it is not liable for the death and [or that] the death is [was] not compensable, the insurance carrier must [shall] file the notice of denial [of a claim (notice of denial)] in the form and manner required by §124.2 of this title (relating to Insurance Carrier Reporting and Notification Requirements). If the insurance carrier does not file the required notice of denial [is not filed] by the 60th day from the date of notice of death or notice of injury that resulted in death, [as required,] the insurance carrier may not raise an issue of compensability or liability, [and] is liable for any benefits that accrued, and must [shall] initiate benefits in accordance with this section.

(d) [(e)] An insurance [A] carrier that has notice [is made aware] of a death under subsection (a) of this section must [shall]:

(1) attempt to identify all potential beneficiaries, other than the subsequent injury fund; [(SHF-)] and

(2) [the carrier shall] maintain documentation relating to its attempt to identify potential beneficiaries.

(e) [(d)] An insurance [A] carrier that identifies [or becomes aware of] a potential beneficiary must use a plain language notice in the form and manner prescribed by the division to [shall] notify them [the potential beneficiary] of potential entitlement to benefits. [; using a plain language notice containing language and content prescribed by the Commission-] This notice must [shall] be sent within seven days after [of] the date the insurance carrier identified the potential beneficiaries [or was otherwise made aware of the identity] and received their contact information [means of contacting the potential beneficiary-].

(f) [(e)] If the insurance carrier receives a claim for death benefits in accordance with §122.100 of this title (relating to Claim for Death Benefits), the insurance carrier must [shall] review the evidence provided by the claimant beneficiary to determine whether the person is entitled to death benefits as provided in §§132.2 [§132.2] through 132.6 [§132.6] of this title (relating to Determination of Facts of Dependent Status; Eligibility of Spouse to Receive Death Benefits; Eligibility of a Child to Receive Death Benefits; Eligibility of a Grandchild to Receive Death Benefits; Eligibility of Other Surviving Dependents and Eligible Parents to Receive Death Benefits).

(g) [(f)] If the insurance carrier believes the claimant beneficiary is eligible to receive death benefits, it must [the carrier shall] begin paying [payment of] death benefits. If the insurance carrier believes that the claimant beneficiary is not eligible to receive death benefits, it must [the carrier shall] file the notice of dispute [of eligibility (notice of dispute)] in the form and manner required by §124.2 of this title [(relating to Insurance Carrier Reporting and Notification Requirements)].

(1) The insurance carrier must [shall] either begin paying [the payment of] death benefits or file the notice of dispute not later than the 15th day after the latest of:

(A) receipt of [receiving] the claim for death benefits;

(B) final adjudication of the insurance carrier's denial of compensability or liability under §124.2 of this title and subsection (c) [(b)] of this section; or

(C) the expiration of the insurance carrier's right to deny compensability or liability [compensability/liability] under subsection (a) of this section.

(2) If the insurance carrier does not file its notice of dispute [is not filed] within 15 days as required, the insurance carrier is liable for and must [shall] pay all benefits that [had] accrued and were payable before [prior to] the date it filed its [the carrier files the] notice of dispute. The insurance carrier must not suspend death benefits before filing its notice of dispute [and only then is the carrier permitted to suspend payment of benefits].

(h) [(g)] If the insurance carrier has filed a notice of denial before receiving [prior to receipt of] a claim for death benefits, the insurance carrier must [shall] provide a copy of the previously filed notice of denial to the claimant beneficiary within seven days of receiving [receipt of] the claim for death benefits.

(i) [(h)] The 15-day timeframe [provided for] in subsection (g) [(f)] of this section applies only to claims for benefits based on dates of injuries [compensable injuries that occurred] on or after September 1, 2003. For claims based on dates of [compensable] injuries before [that occurred prior to] September 1, 2003, the [applicable] timeframe in subsection (g) [(f)] of this section is seven days.

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

Filed with the Office of the Secretary of State on May 3, 2022.

TRD-202201742

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: June 19, 2022

For further information, please call: (512) 804-4703



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.3, 403.5, 403.15

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 403, Criminal Convictions and Eligibility For Certification, concerning §403.3, Scope, §403.5, Access to Criminal History Record Information, and §403.15, Report of Convictions by an Individual or a Department.

BACKGROUND AND PURPOSE

The proposed amendments are initiated as a result of the agency's four-year rule review. The purpose of the proposed amendments to §403.3, Scope, is a word change from "that" to "which". The proposed changes to §403.5 and §403.15 replaces "fire department" with "regulated entity". The change reflects that the commission regulates various entities, not solely fire departments.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be more accurate, clear, and concise rules regarding Criminal Convictions and Eligibility For Certification.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a

local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to amanda.khan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

CROSS REFERENCE TO STATUTE

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

§403.3. Scope.

(a) The policy and procedures established in this chapter apply to a person who holds or applies for any certificate issued under the commission's regulatory authority contained in Government Code, Chapter 419.

(b) When a person is convicted of a crime of a sexual nature, the conviction of which would require the individual to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure; or

(c) When a person is convicted of a crime that is an offense under Title 7 of the Texas Penal Code, or a similar offense under the laws of the United States of America, another state, or other jurisdiction, the person's conduct directly relates to the competency and reliability of the person to assume and discharge the responsibilities of fire protection personnel. Such conduct includes, but is not limited to, intentional or knowing conduct, without a legal privilege, which [that] causes or is intended to cause a fire or explosion with the intent to injure or kill any person or animal or to destroy or damage any property. The commission may:

- (1) deny a person the opportunity to be examined for a certificate;
- (2) deny the application for a certificate;
- (3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;
- (4) refuse to renew a certificate;
- (5) suspend, revoke, or probate the suspension or revocation of an existing certificate; or
- (6) limit the terms or practice of a certificate holder to areas prescribed by the commission.

(d) When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the commission, the commission may:

- (1) deny a person the opportunity to be examined for a certificate;
- (2) deny the application for a certificate;
- (3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;
- (4) refuse to renew a certificate;
- (5) suspend, revoke, or probate the suspension or revocation of an existing certificate; or
- (6) limit the terms or practice of a certificate holder to areas prescribed by the commission.

§403.5. Access to Criminal History Record Information.

(a) Criminal history record. The commission is entitled to obtain criminal history record information maintained by the Department of Public Safety, or another law enforcement agency, to investigate the eligibility of a person applying to the commission for or holding a certificate.

(b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:

- (1) a court order;
- (2) with written consent of the person being investigated;
- (3) in a criminal proceeding; or
- (4) in a hearing conducted under the authority of the commission.

(c) Early review. A regulated entity [~~fire department~~] that employs a person regulated by the commission, a person seeking to apply for a beginning position with a regulated entity, a volunteer fire department, or an individual participating in the commission certification program may seek the early review under this chapter of the person's present fitness to be certified. Prior to completing the requirements for certification, the individual may request such a review in writing by following the required procedure. A decision by the commission based on an early review does not bind the commission if there is a change in circumstances. The following pertains to early reviews:

- (1) The commission will complete its review and notify the requestor in writing concerning potential eligibility or ineligibility within 90 days following receipt of all required and necessary information for the review.
- (2) A notification by the commission regarding the results of an early review is not a guarantee of certification, admission to any training program, or employment with a local government.
- (3) A fee assessed by the commission for conducting an early review will be in an amount sufficient to cover the cost to conduct the review process, as provided in §437.19 of this title (relating to Early Review Fees).

(4) An early review request will be considered incomplete until the requestor submits all required and necessary information. Early review requests that remain incomplete for 90 days following receipt of the initial request will expire. If the request expires and an early review is still desired, a new request and fee must be submitted.

§403.15. Report of Convictions by an Individual or a Department.

(a) A certificate holder must report to the commission^[5] any conviction, other than a minor traffic offense (Class C misdemeanor)² under the laws of this state, another state, the United States, or foreign country, within 14 days of the conviction date.

(b) A regulated entity ~~[fire department]~~ or local government entity shall report to the commission^[5] any conviction of a certificate holder² other than a minor traffic offense (class C misdemeanor)² under the laws of this state, another state, the United States, or foreign country, that it has knowledge of, within 14 days of the conviction date.

(c) A certificate holder is subject to suspension, revocation² or denial of any or all certifications for violation of the requirements of subsection (a) of this section. Each day may be considered a separate offense.

(d) A regulated entity ~~[fire department]~~ or government entity regulated by the commission violating subsection (b) of this section may be subject to administrative penalties of up to \$500. Each day may be considered a separate offense.

(e) Notification may be made by mail, e-mail, or in person to the Texas Commission on Fire Protection (TCFP) Austin office. TCFP Form #014 shall be used.

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 May 9, 2022.

TRD-202201813

Mike Wisko

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 19, 2022

For further information, please call: (512) 936-3812



CHAPTER 423. FIRE SUPPRESSION

SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.3, §423.13

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 423, Fire Suppression, Subchapter A, Minimum Standards For Structure Fire Protection Personnel Certification, concerning §423.3, Minimum Standards for Basic Structure Fire Protection Personnel Certification, and §423.13, International Fire Service Accreditation Congress (IFSAC) Seal.

BACKGROUND AND PURPOSE

The proposed amendments initiated as a result of a rule review conducted by the agency. The purpose of the proposed amendments to rule §423.3, Minimum Standards for Basic Structure Fire Protection Personnel Certification, is to correct the name of the State Firefighters' and Fire Marshals' Association. The change to §423.13 corrects a reference to subsection (b) instead of (c).

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to amanda.khan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS REFERENCE TO STATUTE

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

§423.3. *Minimum Standards for Basic Structure Fire Protection Personnel Certification.*

In order to be certified as Basic Structure Fire Protection Personnel, an individual must:

(1) possess valid documentation from the International Fire Service Accreditation Congress or the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2008 or later edition of the NFPA standard applicable to this discipline and meeting the requirements specified in §439.1 of this title (relating to Requirements--General) as:

(A) Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness Level Personnel; and

(B) Hazardous Materials Operations Level Responders including the Mission-Specific Competencies for Personal Protective Equipment and Product Control under the current edition; or

(C) NFPA 472 Hazardous Materials Operations prior to the 2008 edition; and

(D) meet the medical requirements outlined in §423.1 of this title (relating to Minimum Standards for Structure Fire Protection Personnel); or

(2) complete a commission approved basic structure fire protection program, meet the medical requirements outlined in §423.1 of this title (relating to Minimum Standards for Structure Fire Protection Personnel), and successfully pass the commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic structure fire suppression program shall consist of one or any combination of the following:

(A) completion of a commission approved Basic Fire Suppression Curriculum, as specified in the commission's Certification Curriculum Manual; or

(B) completion of an out-of-state, and/or military training program deemed equivalent to the commission approved Basic Fire Suppression Curriculum; or

(C) documentation of the receipt of a Fire Fighter II certificate, an advanced certificate, or confirmation of training from the State Firefighters' [Firemen's] and Fire Marshals' Association of Texas that is deemed equivalent to a commission approved Basic Fire Suppression Curriculum.

§423.13. *International Fire Service Accreditation Congress (IFSAC) Seal.*

(a) Individuals completing a commission approved basic structure fire protection program, meeting any other NFPA requirement, and passing the applicable commission examination(s) may be granted IFSAC seal(s) for Hazardous Materials Awareness Level Personnel, Hazardous Materials Operations Level Responders (including the Mission-Specific Competencies for Personal Protective Equipment and Product Control), Fire Fighter I, and/or Fire Fighter II by making application to the commission for the IFSAC seal(s) and paying applicable fees, provided they meet the following provisions:

(1) To receive the IFSAC Hazardous Materials Awareness Level Personnel seal, the individual must:

(A) complete the Hazardous Materials Awareness section of a commission approved course; and

(B) pass the Hazardous Materials Awareness section of a commission examination.

(2) To receive the IFSAC Hazardous Materials Operations Level Responders seal (including the Mission-Specific Competencies for Personal Protective Equipment and Product Control) the individual must:

(A) complete the Hazardous Materials Operation section of a commission approved course; and

(B) document possession of an IFSAC Hazardous Materials Awareness Level Personnel seal; and

(C) pass the Hazardous Materials Operations section of a commission examination.

(3) To receive the IFSAC Fire Fighter I seal, the individual must:

(A) complete a commission approved Fire Fighter I course; and

(B) provide medical documentation as outlined in subsection (b) [e] of this section; and

(C) document possession of an IFSAC Hazardous Materials Awareness Level Personnel seal; and

(D) document possession of an IFSAC Hazardous Materials Operations Level Responders seal; and

(E) pass the Fire Fighter I section of a commission examination.

(4) To receive the IFSAC Fire Fighter II seal, the individual must:

(A) complete a commission approved Fire Fighter II course; and

(B) document possession of an IFSAC Fire Fighter I seal; and

(C) pass the Fire Fighter II section of a commission examination.

(b) In order to qualify for a Fire Fighter I seal, the individual must document successful completion of an emergency medical

training course or program that includes those subject areas required by NFPA 1001.

(c) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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 May 9, 2022.

TRD-202201814

Mike Wisko

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 19, 2022

For further information, please call: (512) 936-3812



CHAPTER 463. ADVISORY COMMITTEES

The Texas Commission on Fire Protection (the commission) proposes new Chapter 463, Advisory Committees, concerning Subchapter A, Practice and Procedures, §463.1, Purpose and Objectives, and §463.3, General; Subchapter B, Firefighter Advisory Committee, §463.201 Purpose, §463.203, Eligibility, §463.205, Terms, §463.207, Meetings, §463.209, Limitation of Powers, §463.211, Testimony, and §463.213, Expulsion; Subchapter C, Curriculum and Testing Committee, §463.301, Purpose, §463.303, Eligibility, §463.305, Terms, §463.307, Meetings, §463.309, Limitation of Powers, §463.311, Testimony, and §463.313, Expulsion; and Subchapter D, Health and Wellness Committee, §463.401, Purpose, §463.403, Eligibility, §463.405, Terms, §463.407, Meetings, §463.409, Limitation of Powers, §463.411, Testimony, and §463.413, Expulsion.

BACKGROUND AND PURPOSE

The purpose of the proposed new chapter is to establish rules governing the Commission's advisory committees under Texas Government Code §419.908(f). This new chapter and rules implement a Sunset Commission's recommendation and Senate Bill 709 as passed by the 87th legislature.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to amanda.khan@tcfp.texas.gov.

SUBCHAPTER A. PRACTICE AND PROCEDURES

37 TAC §463.1, §463.3

STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and may appoint advisory committees to assist the commission in the performance of its duties.

CROSS REFERENCE TO STATUTE

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

§463.1. Purpose and Objectives.

(a) The Texas Commission on Fire Protection (TCFP) is organized to aid in the protection of lives and property of Texas citizens through the development and enforcement of recognized professional standards for individuals and the fire service. To achieve the goals of TCFP, each committee will evaluate, make recommendations, and issue reports to the Commission on any issue in the committee's purview. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

(b) The commission has established a Fire Fighter Advisory Committee, Curriculum and Testing Committee, and Health and Wellness Committee. The committee's purpose, eligibility, terms, and meeting procedures are identified in the following subchapters.

§463.3. General.

(a) The Chairperson of the Commission, by and with the approval of the Commission, shall approve all committees and appoint all Committee Chairs. Committee Chairs are responsible for selecting committee members, which are then presented to the Commission for final approval.

(b) The Chairperson of the Commission, with the approval of the Commission, may convene additional committees that are deemed to be in the best interest of the Texas Commission on Fire Protection (TCFP) and its mission.

(c) All committees shall be subject to, and governed by, these bylaws.

(d) The Chairperson of the Commission, by and with the approval of the Commission, will appoint the chairs, who serve at the pleasure of the Commission and may remain in this position for two (2) years before reappointment or until such time as a new person is appointed as the chair.

(e) Committees should be composed of a reasonable odd number of members, with a minimum of nine and a maximum of 15 members.

(f) The committees shall meet at least twice each calendar year at the call of either the committee chair or the Commission.

(g) All committees shall be reviewed for relevance by the Commission every odd year and will either be renewed or discontinued.

(h) Committee Chairs may form ad hoc committees when, in the judgment of the Chair, it will enhance or provide guidance for a specific purpose and time limit/period. Committee Chairs may determine committee selection, but membership is limited only to the ad hoc committee and will disband once the purpose has been met.

(i) Every October each Committee Chair will present to the Commission an end of year status report.

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

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Mike Wisko

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



SUBCHAPTER B. FIREFIGHTER ADVISORY COMMITTEE

37 TAC §§463.201, 463.203, 463.205, 463.207, 463.209, 463.211, 463.213

STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and may appoint advisory committees to assist the commission in the performance of its duties.

CROSS REFERENCE TO STATUTE

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

§463.201. Purpose.

The Firefighter Advisory Committee's purpose is to assist the commission in matters relating to fire protection personnel, fire departments, along with suggested guidance to volunteer firefighters and volunteer fire departments. The committee shall periodically review commission rules relating to fire protection personnel, fire departments, other firefighters, and organizations subject to the regulation of TCFP and recommend changes in the rules when applicable. The committee shall be composed of nine members appointed by the commission. Six members of the committee must be certified fire protection personnel who collectively represent various areas in the field of fire protection. Three members of the committee must be certified instructors of fire protection personnel. At least one member of the committee must be a volunteer fire chief or volunteer firefighter.

§463.203. Eligibility.

(a) Any person, association, corporation, partnership, or other entity having an interest in the above-recited objectives shall be eligible for membership.

(b) Committee composition should have representatives from each fire protection stakeholder group, with consideration on department size, region, and mission.

(c) Interested candidates may apply for committee appointments between January 1 - March 31 of each year. The list of candidates will then be presented to the Commission during their April meeting for consideration. Each October, the Commission will appoint committee members and select alternates at the same time in the event committee members cannot fulfill their tenure and/or replacement members are needed. Terms shall begin in January following approval.

§463.205. Terms.

Committee members shall be appointed to serve six (6) year terms of office, with the intent to stagger and to ensure continuity of members

from year to year. Committee members serve six-year terms and may serve consecutively; however, after a second six-year term, the member will not be eligible for another term until after a lapse of two years.

§463.207. Meetings.

(a) Committee Chairs, or a designated Committee member when the Chair is unavailable, shall conduct all committee meetings.

(b) Committee meetings should be held in Austin, Texas. Committee meetings cannot be held outside of the state of Texas.

(c) Committees shall post meeting times, locations, and agendas with the Secretary of State in accordance with the Open Meetings Act, Texas Government Code Chapter 551. Committees shall keep minutes in accordance with the Open Meetings Act. When feasible, Committees may allow members of the public to participate in a meeting from a remote location by videoconference call pursuant to Texas Government Code §551.127(k) to encourage access and participation throughout the state.

(d) Committee chairs may limit discussion times if, in the opinion of the Chair, it is warranted. Participants who fail to follow the above rules may be subject to removal from the meeting.

(e) Committees may meet by videoconference calls, but only if they follow requirements of Texas Government Code §551.127. The committee must still have a physical location for the public to attend. The member presiding over the meeting must attend in person, while other members and staff may attend remotely.

§463.209. Limitation of Powers.

No action by any Committee Chair or its members shall be binding upon, or constitute an expression of, the policy of TCFP until it has been approved or ratified by the Commission. It shall be the function of the committees to evaluate, to make recommendations, and to report only to the Commission. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

§463.211. Testimony.

Once committee action has been approved by both the Chairperson of the Commission and the Commission, testimony and/or presentations may be given and made before stakeholders, governmental agencies, or any other entity as deemed appropriate by the Chairperson of the Commission.

§463.213. Expulsion.

After written notice and a hearing before the Commission, any Committee member may be expelled from a Committee for conduct that is unbecoming or prejudicial to the aims or repute of TCFP or expelled for lack of attendance to more than half of the scheduled Committee meetings in a calendar year.

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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Mike Wisko

Executive Director

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SUBCHAPTER C. CURRICULUM AND TESTING COMMITTEE

37 TAC §§463.301, 463.303, 463.305, 463.307, 463.309, 463.311, 463.313

STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and may appoint advisory committees to assist the commission in the performance of its duties.

CROSS REFERENCE TO STATUTE

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

§463.301. Purpose.

The purpose of the Curriculum and Testing Committee is to develop and review curricula, test questions, procedures, and the testing process leading to certifications based on applicable NFPA standards, while maintaining compliance with the accreditation process, as required by the International Fire Service Accreditation Congress (IFSAC) when applicable to paid firefighters. Meetings determining final exam development and review (test questions) should be closed meetings per Texas Government Code §551.088 and comply with the requirements of the Open Meetings Act, Texas Government Code Chapter 551.

§463.303. Eligibility.

(a) Any person, association, corporation, partnership, or other entity having an interest in the above-recited objectives shall be eligible for membership.

(b) Committee composition should have representatives from each fire protection stakeholder group, with consideration on department size, region, and mission.

(c) Interested candidates may apply for committee appointments between January 1 - March 31 of each year. The list of candidates will then be presented to the Commission during their April meeting for consideration. Each October, the Commission will appoint committee members and select alternates at the same time in the event committee members cannot fulfill their tenure and/or replacement members are needed. Terms shall begin in January following approval.

§463.305. Terms.

Committee members shall be appointed to serve six (6) year terms of office, with the intent to stagger and to ensure continuity of members from year to year. Committee members serve six-year terms and may serve consecutively; however, after a second six-year term, the member will not be eligible for another term until after a lapse of two years.

§463.307. Meetings.

(a) Committee Chairs, or a designated Committee member when the Chair is unavailable, shall conduct all committee meetings.

(b) Committee meetings should be held in Austin, Texas. Committee meetings cannot be held outside of the state of Texas.

(c) Committees shall post meeting times, locations, and agendas with the Secretary of State in accordance with the Open Meetings Act, Texas Government Code Chapter 551. Committees shall keep minutes in accordance with the Open Meetings Act. When feasible, Committees may allow members of the public to participate in a meeting from a remote location by videoconference call pursuant to Texas Government Code §551.127(k) to encourage access and participation throughout the state.

(d) Committee chairs may limit discussion times if, in the opinion of the Chair, it is warranted. Participants who fail to follow the above rules may be subject to removal from the meeting.

(e) Committees may meet by videoconference calls, but only if they follow requirements of Texas Government Code §551.127. The committee must still have a physical location for the public to attend. The member presiding over the meeting must attend in person, while other members and staff may attend remotely.

§463.309. Limitation of Powers.

No action by any Committee Chair or its members shall be binding upon, or constitute an expression of, the policy of TCFP until it has been approved or ratified by the Commission. It shall be the function of the committees to evaluate, to make recommendations, and to report only to the Commission. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

§463.311. Testimony.

Once committee action has been approved by both the Chairperson of the Commission and the Commission, testimony and/or presentations may be given and made before stakeholders, governmental agencies, or any other entity as deemed appropriate by the Chairperson of the Commission.

§463.313. Expulsion.

After written notice and a hearing before the Commission, any Committee member may be expelled from a Committee for conduct that is unbecoming or prejudicial to the aims or repute of TCFP or expelled for lack of attendance to more than half of the scheduled Committee meetings in a calendar year.

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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Mike Wisko

Executive Director

Texas Commission on Fire Protection

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SUBCHAPTER D. HEALTH AND WELLNESS COMMITTEE

37 TAC §§463.401, 463.403, 463.405, 463.407, 463.409, 463.411, 463.413

STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and may appoint advisory committees to assist the commission in the performance of its duties.

CROSS REFERENCE TO STATUTE

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

§463.401. Purpose.

The purpose of the Health and Wellness Committee is to provide factual data and practical guidance regarding key areas of health and wellness to educate, inform, and facilitate the development of action guides for individuals and departments.

§463.403. Eligibility.

(a) Any person, association, corporation, partnership, or other entity having an interest in the above-recited objectives shall be eligible for membership.

(b) Committee composition should have representatives from each fire protection stakeholder group, with emphasis on department size, region, and mission

(c) Interested candidates may apply for committee appointments between January 1 - March 31 of each year. The list of candidates will then be presented to the Commission during their April meeting for consideration. Each October, the Commission will appoint committee members and select alternates at the same time in the event committee members cannot fulfill their tenure and/or replacement members are needed. Terms shall begin in January following approval.

§463.405. Terms.

Committee members shall be appointed to serve six (6) year terms of office, with the intent to stagger and to ensure continuity of members from year to year. Committee members serve six-year terms and may serve consecutively; however, after a second six-year term, the member will not be eligible for another term until after a lapse of two years.

§463.407. Meetings.

(a) Committee Chairs, or a designated Committee member when the Chair is unavailable, shall conduct all committee meetings.

(b) Committee meetings should be held in Austin, Texas. Committee meetings cannot be held outside of the state of Texas.

(c) Committees shall post meeting times, locations, and agendas with the Secretary of State in accordance with the Open Meetings Act, Texas Government Code Chapter 551. Committees shall keep minutes in accordance with the Open Meetings Act. When feasible, Committees may allow members of the public to participate in a meeting from a remote location by videoconference call pursuant to Texas Government Code §551.127(k) to encourage access and participation throughout the state.

(d) Committee chairs may limit discussion times if, in the opinion of the Chair, it is warranted. Participants who fail to follow the above rules may be subject to removal from the meeting.

(e) Committees may meet by videoconference calls, but only if they follow requirements of Texas Government Code §551.127. The committee must still have a physical location for the public to attend. The member presiding over the meeting must attend in person, while other members and staff may attend remotely.

§463.409. Limitation of Powers.

No action by any Committee Chair or its members shall be binding upon, or constitute an expression of, the policy of TCFP until it has been approved or ratified by the Commission. It shall be the function of the committees to evaluate, to make recommendations, and to report only to the Commission. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

§463.411. Testimony.

Once committee action has been approved by both the Chairperson of the Commission and the Commission, testimony and/or presentations

may be given and made before stakeholders, governmental agencies, or any other entity as deemed appropriate by the Chairperson of the Commission.

§463.413. Expulsion.

After written notice and a hearing before the Commission, any Committee member may be expelled from a Committee for conduct that is unbecoming or prejudicial to the aims or repute of TCFP or expelled for lack of attendance to more than half of the scheduled Committee meetings in a calendar year.

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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Mike Wisko

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 13. CULTURAL RESOURCES PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATION DEPARTMENT SUBCHAPTER A. ADMINISTRATION 13 TAC §11.25

The Texas Historical Commission (Commission) adopts new rule §11.25, related to State Employee Family Leave Pool within Title 13, Part 2, Chapter 11 of the Texas Administrative Code. The new rule is adopted without changes to the text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 845). The rule will not be republished.

Rule 11.25 creates a process for State Employee Family Leave Pool

PUBLIC COMMENT

No comments pertaining to this new rule were received during the thirty-day period following publication on February 25, 2022, in the *Texas Register*.

The new rule is adopted under the authority of the Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission.

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 May 6, 2022.

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Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 26, 2022

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For further information, please call: (512) 463-6100



TITLE 22. EXAMINING BOARDS PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§157.4, 157.7, 157.8

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.4, Computation of Time; Mailbox Rule, and §157.8, Order Modifications, without changes to the proposed text, as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1177). These rules will not be republished. The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.7, Denial of a License, Renewal or Reinstatement; Adverse Action Against a License Holder, with changes to correct referencing to the Texas Administrative Code. This rule will be republished. The amendments are adopted following a comprehensive review of this chapter to better reflect current TALCB procedures and to simplify and clarify where needed.

The amendments to §157.4 account for circumstances when the agency's physical building may be closed, but the agency is otherwise open for business. The amendments to §157.7 clarify the rule's applicability to unlicensed activity. The amendments to §157.8 clarify when a request for modification should be filed.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

§157.7. *Denial of a License, Renewal or Reinstatement; Adverse Action.*

(a) Denial of a License, Renewal, or Reinstatement.

(1) If the Board denies the issuance, renewal or reinstatement of a license, the Board shall promptly give written notice of denial to the applicant. If the applicant is supervised by another license holder, the Board shall send a copy of the notice of denial to the supervisory appraiser.

(2) The notice of denial shall include:

- (A) a statement of the Board's action;
- (B) a summary of the facts and laws on which the action is based;
- (C) a statement of the right of the person to request a hearing; and
- (D) the following language in capital letters in bold-face type: IF YOU FAIL TO REQUEST A HEARING IN WRITING

WITHIN 30 DAYS, THIS DETERMINATION WILL BECOME FINAL.

(3) If a person fails to request a hearing in writing within 30 days of receiving the notice, the Board's determination will become final.

(b) Adverse Action.

(1) If the Board proposes to take adverse action against a license holder, former license holder, registrant, or a person for unlicensed activity, the Board shall promptly give written notice to the person against whom the action is proposed to be taken. If an appraiser trainee is the respondent, the Board shall send a copy of the notice to the supervisory appraiser.

(2) The notice of adverse action shall include:

(A) a summary of the facts and laws on which the proposed action is based;

(B) a statement of the action proposed by the Board, including the proposed sanction and/or the amount of any administrative penalties; and

(C) a statement of the right of the person to a hearing.

(c) A license holder who has agreed in writing to suspension or revocation for failure to comply with the terms of a consent order, consent agreement, or agreed order in connection with an application or a previous disciplinary matter is deemed to have had notice and an opportunity for a hearing in a subsequent action resulting from failure to comply with an administrative requirement of probation, such as payment of a fee or completion of coursework.

(d) Notices sent under this section are complete and effective if sent in the manner described in §157.9 of this title (relating to Notice of Hearing).

(e) The mailbox rule described in §157.9 of this title applies to notices sent under this section if the notice was sent to the respondent's or applicant's mailing address or email address as shown in the Board's records in the manner described in §157.9 of this title.

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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Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.9, §157.10

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.9, Notice of Hearing, and §157.10, Right to Counsel; Right to Participate, without changes to the proposed text, as published in the March 11, 2022, issue

of the *Texas Register* (47 TexReg 1179). The rules will not be republished. The amendments are adopted following a comprehensive review of this chapter to better reflect current TALCB procedures and to simplify and clarify where needed.

The amendments to §157.9 clarify TALCB's procedure for providing notice of hearing consistent with Section 1103.502 of the Texas Occupations Code.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

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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Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



SUBCHAPTER C. POST HEARING

22 TAC §157.17, §157.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.17, Final Decisions and Orders, and §157.18, Motions for Rehearing, without changes to the proposed text, as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1180). The rules will not be republished. The amendments are adopted following a comprehensive review of this chapter to better reflect current TALCB procedures and to simplify and clarify where needed.

The proposed amendments to §157.17 align the section more closely with the applicable statute (§ 2001.058(e), Government Code). The proposed amendments to §157.18 define the methods in which a motion for rehearing may be filed with TALCB.

No comments were received on the amendments as published

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

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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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652



SUBCHAPTER E. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §§157.30 - 157.33, 157.36 - 157.38

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.30, Alternative Dispute Resolution; §157.31, Investigative Conference; §157.32, Negotiated Settlement; §157.33, Mediation; §157.36, Stipulations; §157.37, Agreements; and §157.38, Confidentiality, without changes to the proposed text, as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1182). The rules will not be republished. The amendments are adopted following a comprehensive review of this chapter to better reflect current TALCB procedures and to simplify and clarify where needed.

The amendments to §§157.31(j); 157.33(a); and 157.37(b) reflect changes to TALCB division names. In §157.32, the amendments add an additional method for conducting negotiations, consistent with §157.31. Finally, the amendments to §157.33(e) clarify the equal splitting of fees incurred between parties attending mediation.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

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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Kathleen Santos
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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §§531.1 - 531.3

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §531.1, Fidelity; §531.2, Integrity; and §531.3, Compe-

tency, in Chapter 531, Canons of Professional Ethics and Conduct, without changes to the text, as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1185). The rules will not be republished.

The repeal of these sections is made as a result of the Commission's quadrennial rule review, and more specifically, is the result of a new definitions section in this chapter, which will require the renumbering of these sections. TREC will renumber and replace these rules, with some changes.

No comments were received on the repeal as published.

The repeal is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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Proposal publication date: March 11, 2022
For further information, please call: (512) 936-3057



22 TAC §§531.1 - 531.4, 531.19, 531.20

The Texas Real Estate Commission (TREC) adopts new 22 TAC §531.1, Definitions; §531.2, Fidelity; §531.3, Integrity; §531.4, Competency; and amendments to §531.19, Discriminatory Practices, and §531.20, Information About Brokerage Services, in Chapter 531, Canons of Professional Ethics and Conduct. Sections 531.2 - 531.4, 531.19, and 531.20 are adopted without changes to the text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1185). The rules will not be republished. Section 531.1 is adopted with one non-substantive change to the text (the insertion of the word "Texas" before "Occupations" in §531.1(2)) as published in the March 11, 2022, issue of the *Texas Register*. The rule will be republished.

The new rules and amendments to Chapter 531 are made as a result of the Commission's quadrennial rule review. The changes add a new definitions section for ease of reading and update terminology for consistency throughout the chapter. Importantly, the amendments to both 22 TAC §531.18, Consumer Information, and 22 TAC §531.20, Information About Brokerage Services, are not intended to change who must comply with these rules (*i.e.*, active real estate brokers and sales agents), but merely to use more consistent and concise language.

No comments were received on the proposed new rules and amendments as published.

The new rules and amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of

Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

§531.1. Definitions.

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

- (1) Commission--The Texas Real Estate Commission.
- (2) License Holder--A real estate broker or sales agent licensed under Chapter 1101, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3057



22 TAC §531.18

The Texas Real Estate Commission (TREC) adopts amendments to §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct, without changes to the text, as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1587). The rule will not be republished.

The amendments to Chapter 531 are made as a result of the Commission's quadrennial rule review. Importantly, the amendments to 22 TAC 531.18, Consumer Information, are not intended to change who must comply with this rule *i.e.*, active real estate brokers and sales agents), but merely to use more consistent and concise language.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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 533. PRACTICE AND PROCEDURE

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §533.2, Purpose and Scope; §533.3, Filing and Notice; §533.4, Failure to Answer, Failure to Attend Hearing and Default; §533.5, Transcript Cost; §533.7, Final Decisions and Orders; §533.21, Negotiated Settlement; §533.25, Informal Proceedings; §533.30, Staff Mediation; §533.32, Appointment of Mediator; §533.33, Outside Mediation; §533.36, Agreements; and §533.40, Negotiated Rulemaking, in Chapter 533, Practice and Procedure, without changes to the text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1187). These rules will not be republished. The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §533.1, Definitions, and §533.8, Motions for Rehearing, in Chapter 533, Practice and Procedure, with changes to the text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1187). These rules will be republished. The change to §533.1 was to correct alphabetization, while the change to §533.8 was to replace verbiage to make the rule clearer.

The amendments to Chapter 533 are made as a result of the Commission's quadrennial rule review. The proposed changes update terminology for consistency throughout the chapter. The language "Interpreters and Translators" is added to the title of 22 TAC §533.5, Transcript Cost, to better reflect the content of the section and language is removed from subsection (b) that was inconsistent with applicable law. Subsection (f) of 22 TAC §533.7, is amended to more closely align with the applicable statute (§2001.058(e), Government Code). Finally, subsection (d) of 22 TAC §533.8 is amended to increase transparency regarding the motion for rehearing process.

No comments were received on the proposed amendments as published.

SUBCHAPTER A. DEFINITIONS

22 TAC §533.1

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

§533.1. Definitions.

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

- (1) ADR--Alternative dispute resolution.
- (2) ADR Procedures--Alternatives to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third-party.
- (3) APA--The Administrative Procedure Act (Texas Government Code, Chapter 2001).
- (4) Applicant--Any person seeking a license, certificate, registration, approval, or permit from the Commission.
- (5) Commission--The Texas Real Estate Commission.
- (6) Complainant--Any person who has filed a complaint with the Commission against any person whose activities are subject to the jurisdiction of the Commission.
- (7) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by

the Commission and/or the Executive Director after an opportunity for adjudicative hearing.

(8) Executive Director--The Executive Director of the Texas Real Estate Commission.

(9) License--The whole or part of any registration, license, certificate, approval, permit, or similar form of permission required or permitted by law issued by the Commission.

(10) Mailing Address--The mailing address as provided to the Commission by a license holder and maintained as required by the Commission's rules or as provided to the Commission by an applicant or as shown in the Commission's records for a respondent who is not a license holder. The mailing address for a respondent that holds an active sales agent license shall be the mailing address of the sales agent's sponsoring broker as shown in the Commission's records.

(11) Party--A person admitted to participate in a case before the Commission or the Executive Director.

(12) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(13) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal arguments, or otherwise addresses matters involved in the case.

(14) Respondent--Any person, licensed or unlicensed, who has been charged with violating a law that establishes a regulatory program administered by the Commission or a rule or order issued by the Commission.

(15) Sanctions--Any administrative penalty, disciplinary or remedial action imposed by the Commission for violations of Texas Occupations Code, Chapter 1101, 1102, or 1105 or the Rules adopted by the Commission pursuant to those chapters.

(16) SOAH--State Office of Administrative Hearings.

(17) TAC--Texas Administrative 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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SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

22 TAC §§533.2 - 533.5, 533.7, 533.8

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

§533.8. Motions for Rehearing.

(a) The timely filing of a motion for rehearing is a prerequisite to appeal. The motion must be filed with the Commission by:

(1) delivering the motion in-person to the Commission's headquarters;

(2) sending the motion via email to administration@trec.texas.gov; or

(3) sending the motion via fax to (512) 936-3788, ATTN: TREC General Counsel.

(b) Motions for rehearing are controlled by the APA, §§2001.145 - 2001.147 and this section.

(c) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error, such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commission will take no action and the motion will be overruled by operation of law.

(d) The Commission delegates authority to hear and rule on motions for rehearing to the Commission's Enforcement Committee, consisting of three Commission members appointed by the Commission chair. A motion for rehearing may be ruled upon pursuant to §2001.146(d), Texas Government Code.

(e) Any party may request oral arguments before the Enforcement Committee prior to the final disposition of the motion for rehearing. If the Enforcement Committee grants a request for oral argument, oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chair of the Enforcement Committee or the member designated by the chair to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence, such as excerpts of the record before the presiding officer, may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing, or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal, subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Enforcement Committee may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Enforcement Committee, and any discussion by the members of the Enforcement Committee, the presiding member shall call for a vote on the motion. A member of the Enforcement Committee need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the Enforcement Committee members are present and vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) A petition for judicial review must be filed in a District Court of Travis County Texas as provided by the APA. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(g) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(h) If, after judicial review, the administrative penalty is reduced or not assessed, the Executive Director shall remit to the person charged the appropriate amount, plus accrued interest if the administrative penalty has been paid, or shall execute a release of the bond if a supersedes bond has been posted. The accrued interest on amounts remitted by the Executive Director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed administrative penalty is paid to the Commission and ending on the date the administrative penalty is remitted.

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SUBCHAPTER C. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §§533.21, 533.25, 533.30, 533.32, 533.33, 533.36

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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SUBCHAPTER D. NEGOTIATED RULEMAKING

22 TAC §533.40

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.1

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §534.1, Charges for Copies of Public Information, in Chapter 534, General Administration, without changes to the text, as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1193). The rule will not be republished.

The repeal is adopted as the result of TREC's quadrennial rule review. Specifically, the repeal is the result of a proposed new definitions section in this chapter, which will require the renumbering of this section. TREC will renumber and replace this repealed section.

No comments were received on the repeal as published.

The repeal is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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22 TAC §§534.1 - 534.5, 534.7

The Texas Real Estate Commission (TREC) adopts new 22 TAC §534.1, Definitions; and §534.2, Charges for Copies of Public Information; and amendments to §534.3, Employee Training and Education; §534.4, Historically Underutilized Businesses Program; §534.5, Bid Opening and Tabulation; and §534.7, Vendor Protest Procedures, in Chapter 534, General Administration, without changes to the text, as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1193). The rules will not be republished.

The new rules and amendments to Chapter 534 are made as a result of the Commission's quadrennial rule review. The changes add a new definitions section for ease of reading and update terminology for consistency throughout the chapter. Additionally, 22 TAC §534.4, Historically Underutilized Businesses program, and 22 TAC §534.5, Bid Opening and Tabulation, are amended to correct references to applicable regulations.

No comments were received on the proposed new rules and amendments as published.

The new rules and amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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CHAPTER 535. GENERAL PROVISIONS

The Texas Real Estate Commission (TREC) adopts amendments to current 22 TAC §535.61, Approval of Providers of Qualifying Courses; §535.63, Qualifications for Instructors of Qualifying Courses; §535.65, Responsibilities and Operations of Providers of Qualifying Courses; §535.66, Credit for Courses Offered by Accredited Colleges or Universities; §535.71, Approval of CE Providers; §535.73, Approval of Elective Continuing Education Courses; §535.75, Responsibilities and Operations of Continuing Education Providers; §535.400, Registration of Easement or Right-of-Way Agents; and §535.403, Renewal of

Registration; and adopts new 22 TAC §535.68, Content Requirements for Easement or Right-of-Way Qualifying Courses (NEW), in Chapter 535, General Provisions. Sections 535.66 and 535.68 are adopted with two non-substantive changes to the text (the insertion of the word "Texas" before "Occupations" in §535.66(e)(1) and §535.68), as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1196). The rules will be republished. Sections 535.61, 535.63, 535.65, 535.71, 535.73, 535.75, 535.400, and 535.403 are adopted without changes to the text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1196). The rules will not be republished.

All amendments implement statutory changes enacted by the 87th Legislature in HB 2730. In §§535.61, 535.63, 535.65, 535.66, 535.71, 535.73, and 535.75, the amendments add the term "easement or right-of-way" to conform to statutory changes that require completion of qualifying and continuing education courses to obtain or maintain a certificate of registration. The amendments to §535.61 allow an accredited college or university, as well as a United States armed forces institute, to submit easement or right-of-way qualifying courses for approval for credit without becoming approved providers, similar to the exemptions that currently exist for both real estate and inspector qualifying courses. The changes also clarify that the calculation for the exam passage rate only includes license categories for which the provider offers courses and an examination is required. The amendments to §535.66 add a new subsection and make other conforming changes to address credit for easement or right-of-way courses offered by an accredited college or university, consistent with the change in §535.61 and current rules related to real estate and inspection qualifying courses. New rule §535.68 mirrors the content requirements for the easement or right-of-way qualifying course as required by HB 2730 and adopts a course approval form by reference that outlines the units required to be addressed in each course topic.

The amendments to §535.400 add specific requirements for the issuance of a probationary certificate, as required by HB 2730. For consistency in application, this language mirrors rule language in 22 TAC §535.54, applicable to other license holders. Because HB 2730 requires certificate holders seeking to renew to successfully complete continuing education, the amendments to §535.403 clarify that a certificate holder who fails to timely renew, rather than simply failing to timely pay the renewal fee, must apply for and receive a new registration. These changes also modify the section that clarifies what happens if a registration expires on a Saturday, Sunday, or other day the Commission is not open for business to be consistent with rule language applicable to other license holders in 22 TAC §535.91.

No comments were received on the proposed amendments as published.

HB 2730 provides that while the Commission must adopt rules necessary to implement the statutory requirements by September 1, 2022, a person who has submitted an application for issuance or renewal of a certificate of registration before January 1, 2023, is not subject to the education requirements of those provisions until the first renewal of their certificate after March 1, 2023. As a result, the adopted rules will have an effective date of September 1, 2022, to provide education providers with additional time to meet the new requirements.

SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES

AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §§535.61, 535.63, 535.65, 535.66, 535.68

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted under Texas Occupations Code, §1101.508, which requires the Commission to adopt by rule reasonable requirements for the issuance of a probationary certificate, and §1101.509, which requires the Commission to adopt rules for the approval of coursework that an applicant must successfully complete to be eligible for the issuance or renewal of a certificate of registration.

§535.66. *Credit for Courses Offered by Accredited Colleges or Universities.*

(a) For the purposes of this section, an "accredited college or university" is defined as a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or by a recognized national or international accrediting body.

(b) Exemption. Pursuant to §1101.301 of Tex. Occ. Code, the Commission does not approve qualifying educational programs or courses of study in real estate and real estate inspection offered by an accredited college or university; however, the Commission has the authority to determine whether a real estate or real estate inspection course satisfies the requirements of the Act and Chapter 1102.

(c) Credit for real estate courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics set out in §1101.003 of Tex. Occ. Code in substantially the same manner as clarified by the Commission in §535.64; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design and delivery method.

(d) Credit for real estate inspector courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university meet the following requirements:

(1) meet the subject and topic definitions set out in §1102.001(5) of Tex. Occ. Code as clarified by the Commission in §535.213; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design and delivery method.

(3) any courses offered to fulfill the substitute experience requirements allowed under §1102.111 must meet the requirements set out in §535.212 of this title, including instructor qualifications.

(e) Credit for easement or right-of-way courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics set out in §1101.509, Texas Occupations Code, in substantially the same manner as clarified by the Commission in §535.68; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design, and delivery method.

(f) Preapproval of a course offered under subsections (c), (d), or (e).

(1) An accredited college and university may submit qualifying courses to the Commission for preapproval by filing a form approved by the Commission.

(2) Any course offered by an accredited college and university without preapproval by the Commission will be evaluated by the Commission, using the standards set out in this section, to determine whether it qualifies for credit at such time as a student submits a transcript with the course to the Commission for credit.

(3) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been preapproved for credit.

(g) Required approval of qualifying courses not offered under subsections (c), (d), or (e) or that are not subject to academic accreditation standards.

(1) To be eligible for credit from the Commission, a qualifying course offered by an accredited college and university that is not offered under subsections (c), (d), or (e) or that is not subject to academic accreditation standards is required to be submitted for approval by the Commission in accordance with §535.62 of this subchapter, including payment of any fee required.

(2) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been approved.

(h) Complaints and audits.

(1) If the Commission receives a complaint, or is presented with other evidence acceptable to the Commission, alleging that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate, easement or right-of-way, or real estate inspection course offered under subsections (c), (d), or (e), or is not complying with the requirements of this Subchapter for a real estate, easement or right-of-way, or real estate inspection course not offered under subsections (c), (d), or (e), the Commission may investigate the allegation and/or anonymously audit the course in question.

(2) If after an investigation and/or audit, the Commission determines that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate, easement or right-of-way, or real estate inspection course offered under subsections (c), (d), or (e), or is not complying with the requirements of this Subchapter for a real estate, easement or right-of-way, or real estate inspection course not offered under subsections (c), (d), or (e), the Commission will no longer issue credit to applicants for that course.

(i) Required approval of CE program and courses. An accredited college or university is not exempt from approval for real estate and real estate inspection CE programs and courses and must comply

with all requirements for approval for providers, courses and instructors required by Subchapter G of this chapter.

§535.68. *Content Requirements for Easement or Right-of-Way Qualifying Course.*

To be approved by the Commission, the easement or right-of-way mandatory qualifying course must contain the topics required by §1101.509(b), Texas Occupations Code, and the units outlined in the ERW_QE-0, Qualifying Easement or Right-of-Way Course Approval (ERW--QE-0) Form, hereby adopted by reference.

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. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §§535.71, 535.73, 535.75

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted under Texas Occupations Code, §1101.508, which requires the Commission to adopt by rule reasonable requirements for the issuance of a probationary certificate, and §1101.509, which requires the Commission to adopt rules for the approval of coursework that an applicant must successfully complete to be eligible for the issuance or renewal of a certificate of registration.

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §§535.400, §535.403

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted under Texas Occupations Code, §1101.508, which requires the Commission to adopt by rule reasonable requirements for the issuance of a probationary certificate, and §1101.509, which requires the Commission to adopt rules for the approval of coursework that an applicant must successfully complete to be eligible for the issuance or renewal of a certificate of registration.

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22 TAC §535.406

The Texas Real Estate Commission (TREC) adopts new 22 TAC §535.406, Continuing Education Requirements, in Chapter 535, General Provisions, with a non-substantive change to the text (the insertion of the word "Texas" before "Occupations"), as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1196). The rule will be republished.

The new rule implements statutory changes enacted by the 87th Legislature in HB 2730. New §535.406 is adopted to implement the continuing education requirements in HB 2730.

HB 2730 provides that while the Commission must adopt rules necessary to implement the statutory requirements by September 1, 2022, a person who has submitted an application for issuance or renewal of a certificate of registration before January 1, 2023, is not subject to the education requirements of those provisions until the first renewal of their certificate after March 1, 2023. As a result, new §535.406 will have an effective date of January 1, 2023.

No comments were received on the proposed rule as published.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The rule is also adopted under Texas Occupations Code, §1101.508, which requires the Commission to adopt by rule reasonable requirements for the issuance of a probationary certificate, and §1101.509, which requires the Commission to adopt rules for the approval of coursework that an applicant

must successfully complete to be eligible for the issuance or renewal of a certificate of registration.

§535.406. *Continuing Education Requirements.*

To renew a certificate under this subchapter, a certificate holder must have completed 16 hours of approved continuing education prior to renewal as required by §1101.509, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 541. RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

22 TAC §541.1, §541.2

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §541.1, Criminal Offense Guidelines; and §541.2, Criminal History Evaluation Letters, in Chapter 541, Rules Relating to the Provisions of Texas Occupations Code, Chapter 53, without changes as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1208). The rules will not be republished.

The amendments to Chapter 541 are made as a result of the Commission's quadrennial rule review. The changes define "Texas Real Estate Commission" for ease of reading and consistency. Subsection (d) of 22 TAC §541.1 is amended to better reflect the applicable statutory requirements found in § 53.023, Occupations Code. Additionally, the title of 22 TAC §541.2, Criminal History Evaluation Letters, is amended to add "Determination of Fitness" to reflect the terminology used in section 1101.353, Occupations Code.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed pursuant to Chapter 53, Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2022.

TRD-202201765

Abby Lee

Deputy General Counsel

Texas Real Estate Commission

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Proposal publication date: March 11, 2022

For further information, please call: (512) 936-3057



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 405. PATIENT CARE--MENTAL HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts an amendment to the title of Subchapter K in Texas Administrative Code (TAC) Title 25, Chapter 405, relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers; amendments to §405.261, concerning Purpose, §405.262, concerning Application, §405.263, concerning Definitions, §405.266, concerning Community Centers: Actions Taken upon the Death of Persons Served, §405.268, concerning Facility Community-Based Services and Community Centers: General Guidelines upon Death of a Person Served, §405.269, concerning Facility Campus-Based Programs, Facility Community-Based Services and Community Centers: Administrative Death Review Determination, §405.272, concerning Facility Community-Based Services and Community Centers: Clinical Death Review Determination, §405.274, concerning Community Centers: Clinical Death Review, §405.275, concerning Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review, §405.276, concerning Reporting of Systemic Issues Emerging from Death Reviews; and the repeal of §405.264, concerning Facility Campus-Based Programs: Actions Taken upon the Death of Person Served; §405.265, concerning Facility Community-Based Services: Actions Taken upon the Death of Person Served; §405.267, concerning Facility Campus-Based Programs: Statutory Requirements; §405.270, concerning Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Committee; §405.271, concerning Facility Campus-Based Programs: Clinical Death Review Determination; §405.273, concerning Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review, §405.277, concerning Distribution, and §405.279, concerning References.

The subchapter title and §§405.261 - 405.263, 405.266, 405.268, 405.269, 405.274, and 405.275 are adopted with changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 878). These rules will be republished.

Sections 405.272 and 405.276, and the repeal of §§405.264, 405.265, 405.267, 405.270, 405.271, 405.273, 405.277, and 405.279 are adopted without changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 878). These rules and repeals will not be republished.

BACKGROUND AND JUSTIFICATION

The current TAC provisions reflect internal agency practices that are being updated at the discretion of the State Hospital System Administration. Pursuant to Government Code Section 531.008(c)(5) the HHSC facilities division was created "for the purpose of administering state facilities, including state hospitals and state supported living centers." In furtherance of this purpose, the State Hospital System is voluntarily participating in a Patient Safety Evaluation System. The updated agency practices are intended to implement the Patient Safety Quality Improvement Act (42 U.S.C. §299, et seq.) and related agency regulations by the United States Department of Health and Human Services (42 C.F.R. Part 3). The amendments and repeals to this subchapter are related to the facility references (which included state hospitals, state schools, and state centers per rule definitions) and modify or repeal language or requirements regarding community center death reviews.

The amendments and repeals remove sections, references, and language related to the internal process by which reviews of deaths in state hospitals occur. The process of reviewing deaths occurs through a federally chartered Patient Safety Organization operated by the Texas A&M University Rural and Community Health Institute. Accordingly, the state hospital system has implemented through its Governing Body an operating procedure that outlines the updated process and procedure for the review process.

COMMENTS

The 31-day comment period ended on March 28, 2022.

During this period, HHSC received comments regarding the proposed rules from one organization, Disability Rights Texas. A summary of comments relating to the rules and HHSC responses follows.

Comment: A commenter recommends the rules include the process state hospitals use to report deaths of individuals served to an external entity and to the state office for two reviews to occur and the requirement that the state hospitals will implement any recommendations made by both reviews.

Response: HHSC disagrees because this is included in current internal operating procedures. Pursuant to Government Code §2001.003(6) "a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures" is not included in the definition of a "rule".

Comment: A commenter recommended §§405.264(a) and 405.264(b) outline what staff should do when a deceased individual is found at a state hospital.

Response: HHSC disagrees as this is addressed within internal operating procedures. Specifically, the internal operating procedures require compliance with existing state laws regarding how to address such situations, and HHSC procedures do not create additional requirements or obligations that affect private rights. Pursuant to Government Code §2001.003(6) "a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures" is not included in the definition of a "rule".

Comment: A commenter recommended retaining in rule §405.265 and §405.267, to include how state hospital staff should notify the individual's family or legally authorized representative of the death and how to access information relating to the individual's death.

Response: HHSC disagrees as this is addressed within internal operating procedures. Specifically, the internal operating procedures require compliance with existing state laws regarding how to address such situations, and HHSC procedures do not create additional requirements or obligations that affect private rights. Pursuant to Government Code §2001.003(6) "a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures" is not included in the definition of a "rule".

HHSC revises §405.269(a)(3) to replace the language "commits suicide" with "died by suicide."

HHSC also replaces "persons" with "individuals" in the title of Subchapter K and §405.261, §405.263, in the title of §405.266, in the title of §405.268, §405.269, §405.274, and §405.275.

SUBCHAPTER K. DEATHS OF INDIVIDUALS SERVED BY COMMUNITY MENTAL HEALTH CENTERS

25 TAC §§405.261 - 405.263, 405.266, 405.268, 405.269, 405.272, 405.274 - 405.276

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §552.001, which authorizes HHSC to operate the State Hospital System.

The amendments affect Texas Government Code §531.0055 and Health and Safety Code §552.001. 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.

§405.261. Purpose.

The purpose of this subchapter is to provide clinical peer review procedures and, separately, administrative review procedures to be followed upon the death of an individual receiving services directly operated or contracted for by a community mental health center, and their respective contract providers, in order to improve the quality of care.

§405.262. Application.

The provisions of this subchapter apply to community mental health centers and to their respective contract providers.

§405.263. Definitions.

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

(1) Administrative death review--An administrative/quality assurance review activity to identify non-clinically related problems requiring correction and opportunities to improve the quality of care.

(2) Attending physician--A physician licensed to practice medicine in the State of Texas who is responsible for the general medical care and/or psychiatric care of the individual served.

(3) Chief executive officer or CEO--The executive director of a community center.

(4) Clinical death review--A clinical quality assurance/peer review activity conducted to identify clinically related problems requiring correction and opportunities to improve the quality of care pursuant to the statutes that authorize peer review activities in the State of Texas.

(5) Community center--A community mental health center organized pursuant to the Texas Health and Safety Code, Title 7, Chapter 534, §534.053 (formerly the Texas Mental Health and Mental Retardation Act, §3, as amended, Texas Civil Statutes, Article 5547-201 et seq.).

(6) Contract provider--An entity which, through written agreement or contract, is providing services to an individual served by a community center, including entities regulated by other governmental agencies.

(7) Deceased--An individual who, at death, is receiving services directly operated or contracted for by a community center.

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

(9) Investigating officer--A physician or registered nurse who is neither the attending physician nor anyone significantly involved as the primary provider of treatment to the deceased immediately preceding the death.

(10) Registered nurse--A nurse licensed by the Texas Board of Nurse Examiners to practice professional nursing in the State of Texas.

(11) Unusual circumstances--A death which occurs under circumstances including, but not limited to, the following: unnatural death; death by unlawful means or suspicion of death by unlawful means; absence of witnesses; suicide or suspicion of suicide; or death within 24 hours of admission to the community center.

§405.266. Community Centers: Actions Taken upon the Death of an Individual Served.

(a) Each community center shall develop separate clinical peer review and administrative review procedures consistent with this subchapter to be implemented at the time that a determination has been made to conduct a death review.

(b) When appropriate, the community center CEO or designee shall notify the deceased's personal representative (primary or emergency correspondent(s) of the death; provide an explanation of the relevant facts related to the death; and inform them of their right to examine the deceased's medical information relevant to the death, death certificate, and autopsy findings, if any. A physician shall request consent to conduct an autopsy when appropriate.

(c) Immediately after determination of the need to conduct an administrative death review, the community center CEO shall be responsible for ensuring that the completed HHSC reporting form is submitted to HHSC.

§405.268. Community Centers: General Guidelines upon Death of an Individual Served.

(a) When a death has been determined to require an administrative death review, a copy of the certificate of death shall be made a part of the deceased's record, when possible.

(b) When appropriate, the property of the deceased will be disposed of under the provisions of the Texas Probate Code.

§405.269. Community Centers: Administrative Death Review Determination.

(a) Within one working day of the knowledge of death of an individual receiving services in an HHSC-funded or HHSC-contracted program, the community center CEO is responsible for conducting a preliminary review to determine whether:

(1) the death occurred on the premises of an HHSC-funded or HHSC-contracted program (e.g., the individual dies in his/her sleep at an MHA/MRA funded group home);

(2) the death occurred while the individual was participating in HHSC-funded or HHSC-contracted program activities (e.g., the individual dies in a community hospital after being transferred from the community center; the individual drowns while on a psychosocial program outing);

(3) other conditions indicate that the death may reasonably have been related to the individual's care or activities as part of the community center program (e.g., the individual overdoses on a psychoactive drug; the individual dies by suicide); or

(4) other conditions indicate that although the death is not reasonably related to the individual's care or activities as part of the community center program, an evaluation of policy is warranted (e.g., the individual dies of a chronic illness in a community hospital).

(b) If none of the conditions described in subsection (a) of this section is met, then the community center CEO may elect not to conduct an administrative death review. Documentation that this preliminary review was conducted must be included in the deceased's record.

(c) If any of the conditions described in subsection (a) of this section are met, an administrative death review must be conducted in compliance with this section. In addition, the need for a clinical death review must be determined as described in §405.272 of this subchapter (relating to Community Centers: Clinical Death Review Determination).

§405.274. Community Centers: Clinical Death Review.

(a) Each community center shall develop and implement procedures consistent with this subchapter for the timely reporting and review of deaths.

(b) Deaths subject to a clinical death review will be reviewed by a medical review committee pursuant to the statutes that authorize peer review activities in the State of Texas, consisting of the previously appointed investigating officer and at least two other medical/nursing professionals (M.D., D.O., or R.N.), one of which should be a medical professional whom is neither an employee of the community center nor was the deceased's attending physician (if such medical professional is not available, then the effort to obtain external membership must be documented in the information sent to the administrative death review committee). Of these three committee members, all must be either medical doctors or registered nurses. The community center CEO shall appoint one of the three medical/nursing professionals as chair of the clinical death review committee. For the purposes of this subchapter the term employee does not refer to consultants or contractors. Additionally, the membership of the clinical death review committee may include the community center CEO and/or the director of clinical quality assurance, designee, or the person who is responsible for clinical quality assurance functions.

(1) Upon determination of the need for a clinical death review, the investigating officer shall provide to the clinical death review committee:

- (A) the individual's medical record;
- (B) a copy of the death certificate, bearing a valid diagnosis, if available;
- (C) a copy of the preliminary or full autopsy report, if available;
- (D) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any; and
- (E) a briefing of possible issues involving clinically related community center operational policies and procedures and quality of medical care.

(2) Within 14 calendar days (or 45 days in which an autopsy is performed, or for deaths occurring at medical facilities to which the individual was transferred before death) of the determination of the need for a clinical death review, the clinical death review committee shall meet to review the information the investigating officer has provided as described in subsection (b)(1) of this subsection. On the basis of the review, the committee shall evaluate the quality of medical and nursing care given before death and shall formulate written recommendations, if appropriate, for changes in policy and procedures, professional education, operations, or patient care. Suspected abuse or neglect must be reported in accordance with the rules of the Texas Department of Family and Protective Services.

(c) Within 21 calendar days of the determination of the need for a clinical death review (or 52 days in cases in which an autopsy is performed, or for deaths occurring at medical facilities to which the individual was transferred before death), the clinical death review committee shall submit to the administrative death review committee the following:

- (1) the clinical death review committee's recommendations;
- (2) a copy of the death/discharge summary, if available;
- (3) a copy of the death certificate, bearing a valid diagnosis, if available;
- (4) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any; and
- (5) documentation of the effort to obtain an external medical professional, if no such person was available.

(d) To maintain the effectiveness of the death review process, HHSC may conduct reviews of the community center's clinical death review process.

(e) The community center CEO is authorized to grant variances from the timelines by this section on a case-by-case basis. Reasons for timeline variances must be justified and documented.

§405.275. Community Centers: Administrative Death Review.

(a) The community center CEO shall convene an administrative death review committee:

- (1) immediately after the determination of the need for an administrative death review, if a clinical death review was not conducted;
- (2) when a preliminary administrative death review is to take place as determined in §405.272(b) of this subchapter (relating to Community Centers: Clinical Death Review Determinations); or
- (3) immediately after the receipt of the information from the clinical death review committee as described in §405.274(c) of this subchapter (relating to Community Centers: Clinical Death Review).

(b) The membership of the administrative death review committee shall consist of:

- (1) three senior administrative and medical personnel (e.g., CEO, medical director, director of nursing, director of quality assurance, etc.) one of whom shall be designated as the chair by the CEO;
- (2) a representative of the public, external to HHSC and not related to or associated with the deceased (e.g., a member of the public responsibility committee, a member of the community hospital's ethics committee, a family member, an advocate, a consumer, etc.). If such representative of the public is not available, then the effort to obtain external membership must be documented in the information sent to HHSC; and

(3) other individuals appropriate to the death being reviewed (e.g., the investigating officer).

(c) The purpose of the administrative death review committee is to:

- (1) review the information and recommendations provided by the clinical death review committee and/or from the preliminary investigation;
- (2) review operational policies and procedures and continuity of care issues which may have affected the care of the individual and formulate written recommendations for changes in policies and procedures, if appropriate; and
- (3) act upon the recommendations described in paragraphs (1) and (2) of this subsection.

(d) If information presented during the administrative review indicates the need for a clinical death review or a re-review, then the administrative death review committee has the authority to request such review.

(e) Suspected abuse or neglect must be reported in accordance with the rules of the Texas Department of Family and Protective Services.

(f) Within 14 calendar days of the determination of the need for an administrative death review (or 45 days in cases in which an autopsy is performed, or for deaths occurring at medical facilities to which the individual was transferred before death) or within 14 calendar days after the receipt of the information from the clinical death review committee, the administrative death review committee shall submit the following elements to HHSC:

- (1) a copy of the death/discharge summary, if available;
- (2) a copy of the death certificate, bearing a valid diagnosis, if available;
- (3) a copy of the preliminary or full autopsy report, if available;
- (4) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any;
- (5) a copy of the clinical death review committee's recommendations, if such review was conducted;
- (6) a copy of the administrative death review committee's recommendations; and
- (7) if applicable, documentation of the effort to obtain external membership for the clinical death review committee and/or the administrative death review committee, if no such medical professional and/or representative of the public was available.

(g) A summary of the resulting actions taken in response to the recommendations of the administrative and clinical death review committees shall be forwarded by the CEO or designee to HHSC within 28 calendar days following the submission of the elements contained in subsection (f)(1) - (7) 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 May 6, 2022.
TRD-202201788

Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: February 25, 2022
For further information, please call: (512) 438-3049



**25 TAC §§405.264, 405.265, 405.267, 405.270, 405.271,
405.273, 405.277, 405.279**

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §552.001, which authorizes HHSC to operate the State Hospital System.

The repeals affect Texas Government Code §531.0055 and Health and Safety Code §552.001. 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (512) 438-3049



TITLE 34. PUBLIC FINANCE

**PART 3. TEACHER RETIREMENT
SYSTEM OF TEXAS**

**CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER B. COMPENSATION**

34 TAC §25.21

The Teacher Retirement System of Texas (TRS) adopts amendments to §25.21, relating to Compensation Subject to Deposit and Credit, under Subchapter B (relating to Compensation) of Chapter 25 in Part 3 of Title 34 of the Texas Administrative Code without changes to the proposed text as originally published in the January 7, 2022, issue of the *Texas Register* (47 TexReg 15). The rule will not be republished.

REASONED JUSTIFICATION

TRS amends §25.21 to conform with legislation passed during the regular session of the 87th Legislature. Specifically, House Bill 1525 amended Government Code §822.201 to provide that any increased compensation paid to a teacher by a school district using funds received by the district under the teacher in-

centive allotment (TIA) is creditable compensation for TRS purposes.

The TIA is an optional compensation program established by House Bill 3 during 2019 legislative session that entitles school districts to additional state funds for employee compensation based on the high performance of certain teachers within the district. In some cases, employees that receive additional compensation under the TIA can greatly increase their current salaries as one purpose of the program is to provide a viable pathway for highly-qualified classroom teachers to earn six-figure salaries. This means that the additional compensation that an employee receives under the TIA could have a substantial impact on that employee's TRS pension if that compensation is creditable compensation under TRS laws and rules.

Prior to House Bill 1525, TRS had to review the compensation plan for each district participating in the TIA to determine if the compensation the district paid its employees under the program qualified as creditable compensation. House Bill 1525 now provides, however, that any increased compensation paid under the TIA qualifies as creditable compensation for TRS purposes, and TRS amends §25.21 to conform with this change. In addition, TRS makes other conforming changes to §25.21.

COMMENTS

No comments on the proposed adoption of the amendments were received.

STATUTORY AUTHORITY

Amended §25.21 is adopted under the authority of Government Code § 822.201, which provides that increased compensation paid to a teacher by a school district using funds received by the district under the teacher incentive allotment under Section 48.112, Education Code qualifies as "salary and wage" for TRS purposes and is, therefore, subject to deposit and credit by TRS, and Government Code §825.102, which authorizes the board of trustees to adopt rules for administration of the funds of the retirement system and eligibility for membership.

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 May 5, 2022.

TRD-202201757
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: May 25, 2022
Proposal publication date: January 7, 2022
For further information, please call: (512) 542-6506



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

**PART 16. TEXAS CIVIL COMMITMENT
OFFICE**

**CHAPTER 810. CIVIL COMMITMENT
SUBCHAPTER B. CIVIL COMMITMENT**

37 TAC §810.156

The Texas Civil Commitment Office (TCCO) adopts an amendment to §810.156, concerning Sexually Violent Predators Required to Submit to Global Positioning Satellite (GPS) Tracking. The section is adopted without changes to the proposed text in the November 5, 2021, issue of the *Texas Register* (46 TexReg 7568). The rule will not be republished.

The amended section is adopted to revise the description of the two most restrictive tiers of treatment in which clients are required to submit to GPS tracking under Section 841.082(a)(4)(A)(ii) of the Health and Safety Code. Tier two has been divided into two parts - Tier 2 and Tier 2-I. Tier 2-I is the most restrictive part being comprised of clients in their first six months of assignment to Tier 2 and clients in the tier that have an incident report sustained at a Behavioral Management Review (BMR).

During the 30-day comment period following publication in the *Texas Register*, no comments were received regarding the amendment.

The amended section is adopted under Health and Safety Code §841.141 which authorizes the adoption of rules to administer Chapter 841.

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 May 4, 2022.

TRD-202201751

Marsha McLane

Executive Director

Texas Civil Commitment Office

Effective date: May 24, 2022

Proposal publication date: November 5, 2021

For further information, please call: (512) 341-4421



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §362.1. Definitions. The amendments are adopted to clarify and cleanup the section. The amendments are adopted with changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1071) and will be republished. The change was to not adopt the proposed new definition of occupational therapy practice and instead retain the current definition.

The amendments revise current definitions to increase clarity and uniformity, update and/or remove outdated and/or unnecessary definitions, and remove possible redundancy. For example, the definitions of occupational therapist registered and cer-

tified occupational therapy assistant will be removed as part of the amendments and related information will be collocated under the definitions of occupational therapist and occupational therapy assistant.

Changes will also revise the definition of non-licensed personnel, including to remove a reference to on-the-job training from the definition, particularly as the definition of an occupational therapy aide in Texas Occupations Code §454.002, Definitions, already includes such a reference.

The amendments also include the removal of information regarding phone numbers from the definition of a complete renewal. A related amendment to Texas Administrative Code §369.2, Changes of Name or Address, which will add a requirement regarding notifying the Board of phone number changes, has also been adopted and submitted for publication to the *Texas Register*.

The amendments as proposed included the replacement of the current definition of occupational therapy practice with an updated and expanded definition adapted from related information from the American Occupational Therapy Association (AOTA). The change would have aligned the definition more closely with language newly available for possible use on a national level from AOTA.

Public comment from the Texas Medical Association (TMA) was received regarding the proposed new definition of occupational therapy practice. TMA's comment included concerns regarding the addition of "training in . . . medication management" in (C)(ii), "Identification" and "pain . . . management" in (C)(iii), and "Remediation of . . . low vision" in (C)(xii) of the proposed definition. TMA's comment included that such changes could be improperly applied to expand scope outside of the Texas Occupational Therapy Practice Act and/or considered how the changes might conflict with existing statutory language. TMA's comment also considered that such could be misinterpreted by occupational therapy practitioners to allow for the practice of medicine. The comment, for example, considered how the provisions could be misinterpreted to allow for the recommendation of medication treatment, the diagnosis of diseases or disorders, and/or the practice of medicine to treat vision dysfunction. The Board agrees with the comment and the concerns raised therein and will retain the current definition of occupational therapy practice and not adopt the proposed new definition of occupational therapy practice.

Public comment from the American Occupational Therapy Association (AOTA) was also received regarding the proposed new definition of occupational therapy practice. AOTA's comment included that it supported such as reflective of updates to the Definition of Occupational Therapy Practice for AOTA's 2021 Model Occupational Therapy Practice Act. AOTA noted that it appreciated the Board's attention to the updated definition and its promptly proposing amendments to its definition in regulation. The Board agrees with and appreciates the comment, but the Board will not be moving forward with the new definition of occupational therapy practice.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.002, Definitions, §454.006, Practice of Occupational Therapy, and §454.213, Accepted Practice; Practitioner's Referral.

§362.1. *Definitions.*

The following words, terms, and phrases when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code.

(3) AOTA--American Occupational Therapy Association.

(4) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (e.g., organizations, communities).

(7) Complete Application--Application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(8) Complete Renewal--Contains renewal fee, renewal form with continuing education submission form, home/work address(es), jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(9) Continuing Education Committee--Reviews and makes recommendations to the Board concerning continuing education requirements and special consideration requests.

(10) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(11) Endorsement--The process by which the Board issues a license to a person currently licensed in another state or territory of the United States that maintains professional standards considered by the Board to be substantially equivalent to those set forth in the Occupational Therapy Practice Act and who is applying for a Texas license for the first time.

(12) Evaluation--The process of planning, obtaining, documenting, and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(13) Examination--The Examination as provided for in §454.207 of the Occupational Therapy Practice Act (relating to License Examination). The current Examination is the initial certification examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(14) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(15) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(16) Intervention--The process of planning and implementing specific strategies based on the plan of care, which includes the client's desired outcome and evaluation data, and evidence to effect

change in the client's occupational performance leading to engagement in occupation to support participation.

(17) Investigation Committee--Reviews and makes recommendations to the Board concerning complaints and disciplinary actions regarding licensees, applicants, and entities regulated by the Board.

(18) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board.

(19) Jurisprudence Examination--An examination covering information contained in the Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. This test is an open book, online examination with multiple choice and/or true-false questions. The passing score is at least 70%.

(20) License--Document issued by the Texas Board of Occupational Therapy Examiners that authorizes the practice of occupational therapy in Texas.

(21) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post-surgical status. Synonymous with the term health care condition.

(22) NBCOT--National Board for Certification in Occupational Therapy.

(23) Non-Licensed Personnel--OT Aide or other person not licensed by this board who provides support services to and requires supervision by occupational therapy practitioners.

(24) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions that do not require the routine intervention of a physician.

(25) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life, and contributing to the social and economic fabric of their communities.

(26) Occupational Therapist (OT)--An individual who holds a license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist who is designated as an Occupational Therapist, Registered (OTR®).

(27) Occupational Therapy Assistant (OTA)--An individual who holds a license to practice or represent self as an Occupational Therapy Assistant in Texas and who is required to be under the general supervision of an OT. This definition includes an Occupational Therapy Assistant who is designated as a Certified Occupational Therapy Assistant (COTA®).

(28) Occupational Therapy Plan of Care--A written statement of the planned course of occupational therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(29) Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(30) Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this board.

(31) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(32) Place(s) of Business--Any facility in which a licensee practices.

(33) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this board may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

(34) Rules--Refers to the TBOTE Rules.

(35) Screening--A process used to determine a potential need for occupational therapy interventions and educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(36) Telehealth--A mode of service delivery for the provision of occupational therapy services delivered by an occupational therapy practitioner to a client at a different physical location using telecommunications or information technology. Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

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 May 9, 2022.

TRD-202201808

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 369. DISPLAY OF LICENSES

40 TAC §369.2, §369.3

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §369.2, Changes of Name or Address, and §369.3, Use of Titles. The amendments to §369.2 add a requirement to notify the Board of phone number changes and revise the rule title. The amendments to §369.3 cleanup and clarify the section and add information regarding the use of the title doctor. The amendments are adopted without changes to the proposed text as published in the March

4, 2022, issue of the *Texas Register* (47 TexReg 1075) and will not be republished.

Amendments to §369.2, Changes of Name or Address, will require licensees to update the Board of phone number changes, and a related amendment will change the title of the section from "Changes of Name or Address" to a more comprehensive title, "Change of Name or Contact Information." Concomitant with such changes, an adopted amendment to 40 Texas Administrative Code §362.1, Definitions, has also been submitted to the *Texas Register* for publication and will remove information regarding phone numbers from the definition of a complete renewal.

Changes to §369.3 will clarify and cleanup current provisions regarding the use of titles to increase clarity and consistency in the section.

An additional change to the section is a reference to Occupational Therapy Practice Act §454.007, Use of Title of Doctor. The amendment provides that the use of the title doctor is governed by §454.007.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.007, Use of Title of Doctor, and §454.201, License Required; Use of Title.

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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Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
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For further information, please call: (512) 305-6900



CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.2

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §371.2, Retired Status. The changes are adopted to revise requirements concerning voluntary charity care. The amendments are adopted without changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1077). The rule will not be republished.

The changes will remove the requirement that the voluntary charity care that licensees on retired status may offer may only be provided for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. The changes will expand the possible opportunities licensees on retired status have to offer voluntary charity care.

The changes also include a cleanup to the section to change "OT Practice Act" to "Occupational Therapy Practice Act" to achieve greater uniformity in the board rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, and under Texas Occupations Code §112.051, Reduced License Requirements for Retired Health Care Practitioners Performing Charity Work, which requires each licensing entity to adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care.

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 May 9, 2022.

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Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
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For further information, please call: (512) 305-6900



CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §372.1, Provision of Services. The changes are adopted to cleanup and clarify the section and revise requirements regarding the provision of occupational therapy services, including services delivered via telehealth. The amendments are adopted with changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1078). The rule will be republished. The change upon adoption was to not adopt the proposed new §372.1(h)(2) and instead retain the current §372.1(h)(2).

Adopted changes to the section include those that will clarify requirements concerning the provision of occupational therapy services. For example, a provision will be added that will clarify that the occupational therapist is responsible for determining whether an evaluation is needed and if a referral is required for an occupational therapy evaluation.

The changes are also adopted to clarify provisions regarding telehealth and the required client contact with an occupational therapy practitioner. For example, the amendments will clarify that when such contact may be in person or via telehealth, a combination of in-person contact and telehealth may be used.

The changes will also revise requirements concerning the contact required for an intervention session and will allow for such contact to also be satisfied by synchronous audio contact, provided that the occupational therapy practitioner makes use of store-and-forward technology in preparation for or during the intervention session. The changes include adding a definition of store-and-forward technology.

In addition, the amendments include the removal of a provision that requires the on-site presence of the occupational therapy practitioner for the initial application of devices that are in sustained skin contact with the client. The change may facilitate the possible expansion of occupational therapy services for consumers and allow for the occupational therapy practitioner, as applicable, to make determinations regarding the initial applications of such devices in compliance with further sections of the Occupational Therapy Practice Act and Board Rules, including Texas Administrative Code §373.1, Supervision of Non-Licensed Personnel, adopted changes concerning which, including concerning the initial application of adaptive/assistive equipment and splints, have also been submitted for publication to the *Texas Register*.

Public comment from the Texas Occupational Therapy Association (TOTA) was received and included that TOTA supported this proposed rule and that TOTA specifically supported the amendment that includes the removal of the provision that requires the on-site presence of the occupational therapy practitioner for the initial application of devices that are in sustained skin contact with the client. TOTA included that this proposed rule will improve access to care for Texans who might be medically fragile, have limited access to transportation, and live in rural areas to seating and mobility evaluations and other occupational therapy services. TOTA also noted that they can anticipate the continued expansion of telehealth use, and occupational therapy practitioners will be able to compete in all settings.

Public comment from the American Occupational Therapy Association (AOTA) was also received regarding the removal of the provision. AOTA's comment included that it supported the removal and that removing the provision eliminates a significant barrier to occupational therapy practitioners' ability to provide that quality care to their clients who may need a wheelchair, durable medical equipment, or other device and that it was also congruent with occupational therapy practitioners' education and training. The comment also included information regarding recent changes in federal and state regulations that may allow for the expanded use of telehealth and noted the increased use of telehealth by occupational therapy practitioners.

The Board thanked TOTA and AOTA and agreed with the comments and made no changes based on such.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.006, Practice of Occupational Therapy, and §454.213, Accepted Practice; Practitioner's Referral.

§372.1. *Provision of Services.*

(a) Medical Conditions.

(1) Occupational therapists may evaluate the client to determine the need for occupational therapy services without a referral. However, a referral must be requested at any time during the evaluation process when necessary to ensure the safety and welfare of the client.

(2) Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(b) Non-Medical Conditions. The evaluation or intervention for a non-medical condition does not require a referral. However, a referral must be requested at any time during the evaluation or intervention process when necessary to ensure the safety and welfare of the client.

(c) Methods of Referral. The referral must be from a licensed referral source in accordance with the Occupational Therapy Practice Act §454.213 (relating to Accepted Practice; Practitioner's Referral) and may be transmitted in the following ways:

(1) by a written document, including paper or electronic information/communications technologies;

(2) verbally, either in person or by electronic information/communications technologies. If a referral is transmitted verbally, it must be documented by the authorized personnel who receives the referral. In this subsection, "authorized personnel" means staff members authorized by the employer or occupational therapist to receive referrals transmitted verbally; or

(3) by an occupational therapy plan of care, developed according to the requirements of this section, that is signed by the licensed referral source.

(d) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner without a referral.

(e) Evaluation.

(1) The occupational therapist is responsible for determining whether an evaluation is needed and if a referral is required for an occupational therapy evaluation.

(2) Only an occupational therapist may perform an initial evaluation or any re-evaluations.

(3) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(4) The occupational therapist is responsible for determining whether any aspect of the evaluation may be conducted via telehealth or must be conducted in person.

(5) The occupational therapist must have contact with the client during the evaluation. The contact must be synchronous audio and synchronous visual contact that is in person, via telehealth, or via a combination of in-person contact and telehealth. Other telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication.

(6) The occupational therapist may delegate to an occupational therapy assistant the collection of data for the evaluation. The occupational therapist is responsible for the accuracy of the data collected by the occupational therapy assistant.

(f) Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify, or complete an occupational therapy plan of care. It is a violation of the Occupational Therapy Practice Act for anyone other than the occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client should be discharged, or any other aspect of the provision of occupational therapy as set out in the Occupational Therapy Practice Act and Rules.

(2) Modifications to the plan of care must be documented.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) Except where otherwise restricted by rule, the occupational therapy practitioner is responsible for determining whether any aspect of the intervention session may be conducted via telehealth or must be conducted in person.

(8) The occupational therapy practitioner must have contact with the client during the intervention session.

(A) The contact must be either:

(i) synchronous audio and synchronous visual contact that is in person, via telehealth, or via a combination of in-person contact and telehealth; or

(ii) synchronous audio contact, provided that the occupational therapy practitioner makes use of store-and-forward technology in preparation for or during the intervention session. The synchronous audio contact may be in person and/or via telehealth. In this subsection, "store-and-forward technology" means technology that stores and transmits or grants access to a client's clinical information for review by an occupational therapy practitioner at a different physical location than the client.

(B) Other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication.

(9) Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant tasks that they both agree are within the competency level of that occupational therapy assistant.

(g) Documentation.

(1) The client's records include the medical referral, if required; the initial evaluation; the plan of care, including the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and any re-evaluations, if required; any patient related documents; and the discharge or discontinuation of occupational therapy services documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and modalities provided.

(3) In each intervention note, the occupational therapy assistant must include the name of an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. The occupational therapist in the intervention note may be different from the occupational therapist who wrote the plan of care. The occupational therapy assistant may not provide services unless this requirement is met.

(h) Discharge or Discontinuation of Occupational Therapy Services.

(1) Only an occupational therapist has the authority to discharge clients from occupational therapy services. The discharge or discontinuation of occupational therapy services is based on whether the client has achieved predetermined goals, has achieved maximum

benefit from occupational therapy services, or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge or discontinuation of occupational therapy services documentation, and/or make recommendations for any further needs of the client in another continuum of care.

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 May 9, 2022.

TRD-202201811

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 373. SUPERVISION

40 TAC §373.1

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §373.1. Supervision of Non-Licensed Personnel. The changes cleanup and clarify the section and revise requirements concerning the supervision required for the delegation of certain tasks to non-licensed personnel. The amendments are adopted without changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1081) and will not be republished.

The section currently includes a list of tasks that an occupational therapy practitioner may delegate to non-licensed personnel. Changes to the section will remove general items that are not specific to occupational therapy practice. Such items concern routine department maintenance, transportation of clients, preparation or set up of intervention equipment and work area, and assisting clients with their personal needs during the intervention.

The changes will also include the removal of a provision that requires the on-site presence of the occupational therapy practitioner for the initial application of adaptive/assistive equipment and splints. The change will enable services to be provided via telehealth, make occupational therapy services more accessible for consumers, and allow the occupational therapy practitioner to determine when on-site supervision is necessary.

An adopted change to 40 Texas Administrative Code §372.1, Provision of Services, regarding removing a requirement concerning the on-site presence of the occupational therapy practitioner for the initial application of devices that are in sustained skin contact with the client, has also been submitted for publication to the *Texas Register*.

The section also includes a change to add the clarifying phrase "of the services provided" with regard to the requirement as per subsection (c) of the section that "Supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight."

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.002, Definitions.

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 May 9, 2022.

TRD-202201812

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900





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 Appraiser Licensing and Certification Board

Title 22, Part 8

The Texas Appraiser Licensing and Certification Board (TALCB) files this notice of intention to review 22 TAC Chapter 159, Rules Relating to the Provisions of the Texas Appraisal Management Company Registration and Regulation Act. This review is undertaken pursuant to Government Code, §2001.039.

During the review process, TALCB may determine whether a specific rule requires amendments to refine TALCB's legal and policy considerations; whether the rules reflect current TALCB procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period before final adoption or repeal. Final consideration of this rules review is expected at the TALCB meeting in November 2022.

Any questions or comments pertaining to this notice of intention to review should be directed to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov within 30 days of publication.

TRD-202201805
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Filed: May 6, 2022



Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) files this notice of intention to review Texas Administrative Code, Title 22, Part 23, Chapter 535, General Provisions. This review is undertaken pursuant to Government Code, §2001.039. TREC will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rule review is expected at the TREC meeting in November 2022.

Any questions or comments pertaining to this notice of intention to review should be directed to Vanessa E. Burgess, General Counsel,

Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mailed to general.counsel@trec.texas.gov within 30 days of publication.

During the review process, TREC may determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

Issued in Austin, Texas on May 2, 2022.

TRD-202201796
Vanessa E. Burgess
General Counsel
Texas Real Estate Commission
Filed: May 6, 2022



Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 517, Subchapter A, Conservation Assistance, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 517, Subchapter A, Conservation Assistance, continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 517, Subchapter A, Conservation Assistance, begins with the publication in the *Texas Register*; and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tssweb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201778

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 517, Subchapter B, Cost-Share Assistance for Water Supply Enhancement, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 517, Subchapter B, Cost-Share Assistance for Water Supply Enhancement, continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 517, Subchapter B, Cost-Share Assistance for Water Supply Enhancement, begins with the publication in the *Texas Register*; and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tss-wcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201779

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 518, Subchapter B, Historically Underutilized Business Program, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 518, Subchapter B, Historically Underutilized Business Program, continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 518, Subchapter B, Historically Underutilized Business Program, begins with the publication in the *Texas Register*; and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tss-wcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201780

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 519, Subchapter A, Technical Assistance, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 519, Subchapter A, Technical Assistance, continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 519, Subchapter A, Technical Assistance, begins with the publication in the *Texas Register*; and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tss-wcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201781

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 520, Subchapter A, Election Procedures, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 520, Subchapter A, Election procedures, continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 520, Subchapter A, Election procedures, begins with the publication in the *Texas Register*; and ends 30 days thereafter. Com-

ments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tss-wcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201782

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 521, Subchapter A, Technical Assistance Program for Soil and Water Conservation Land Improvement Measures, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 521, Subchapter A, Technical Assistance Program for Soil and Water Conservation Land Improvement Measures continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 521, Subchapter A, Technical Assistance Program for Soil and Water Conservation Land Improvement Measures, begins with the publication in the *Texas Register*, and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tss-wcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201783

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter A, Operation And Maintenance Grant Program, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept com-

ments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter A, Operation And Maintenance Grant Program, continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter A, Operation And Maintenance Grant Program begins with the publication in the *Texas Register*, and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tss-wcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201784

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Structural Repair Grant Program, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Structural Repair Grant Program, continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Structural Repair Grant Program begins with the publication in the *Texas Register*, and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tss-wcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201785

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



The (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal 31 Texas Administrative Code, Part 17, Chapter 530, Carrizo Cane Eradication Program, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting 31 Texas Administrative Code, Part 17, Chapter 530, Carrizo Cane Eradication Program continue to exist.

The comment period on the review of 31 Texas Administrative Code, Part 17, Chapter 530, Carrizo Cane Eradication Program, begins with the publication in the *Texas Register*; and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504.

Comments may also be submitted electronically to lparker@tss-wcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202201786

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 143, Executive Clemency; and Chapter 145, Parole.

The Board undertakes its review pursuant to Government Code, §2001.039. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Any proposed changes to the rules within Chapters 143 and 145 as a result of the rule review will be published in the Proposed Rules section of a subsequent issue of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by email to Bettie.Wells@tdcj.texas.gov.

TRD-202201821

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: May 9, 2022



Adopted Rule Reviews

Texas Appraiser Licensing and Certification Board

Title 22, Part 8

In accordance with Texas Government Code §2001.039, the Texas Appraiser Licensing and Certification Board (TALCB) has concluded its review of 22 TAC Chapter 155, Rules Relating to Standard of Practice, and Chapter 157, Rules Relating to Practice and Procedure. The notice of proposed rule review was published in the November 19, 2021, issue of the *Texas Register* (46 TexReg 7899).

TALCB has determined that the reasoned justification for adopting 22 TAC 155 and 157 continues to exist. Furthermore, the review process may indicate that a specific rule needs to be amended to further refine or better reflect current TALCB procedures and policy considerations, or that rules be combined or reduced for simplification and clarity. Accordingly, TALCB adopts with amendments 22 TAC 157, Subchapters A, B, C, and E (proposed in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1177) and adopted under the Adopted Rules section of this issue of the *Texas Register*.

No comments were received regarding TALCB's notice of review. This notice concludes TALCB's review of 22 TAC Chapter 155, Rules Relating to Standard of Practice, and Chapter 157, Rules Relating to Practice and Procedure.

TRD-202201806

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Filed: May 6, 2022



Texas Real Estate Commission

Title 22, Part 23

In accordance with Texas Government Code §2001.039, the Texas Real Estate Commission (TREC) has concluded its review of Texas Administrative Code, Title 22, Part 23, Chapter 531, Canons of Professional Ethics and Conduct, Chapter 533, Practice and Procedure, Chapter 534, General Administration, and Chapter 541, Rules Relating to the Provisions of Texas Occupations Code, Chapter 53. The notice of proposed rule review was published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 8079).

TREC has determined that the reasoned justification for adopting Texas Administrative Code, Title 22, Part 23, Chapters 531, 533, 534 and 541 continues to exist. Furthermore, the review process indicated that certain rules needed to be amended to further refine or better reflect current TREC procedures and policy considerations or that rules should be combined or reduced for simplification and clarity. Accordingly, amendments to 22 TAC Chapters 531; 533, Subchapters A-D; 534; and 541 were proposed and published in the March 11, 2022, and March 25, 2022, issues of the *Texas Register* (47 TexReg 1185) and (47 TexReg 1587), respectively, and are adopted under the Adopted Rules section of this issue of the *Texas Register*.

No comments were received regarding TREC's notice of review. This notice concludes TREC's review of Texas Administrative Code, Title 22, Part 23, Chapters 531, 533, 534 and 541.

Issued in Austin, Texas on May 2, 2022.

TRD-202201767

Vanessa Burgess

General Counsel

Texas Real Estate Commission

Filed: May 5, 2022



Texas Department of Insurance

Title 28, Part 1

The Texas Department of Insurance (TDI) has completed its review of Texas Administrative Code, Title 28, Part 1, Chapters 1, 3, 8, 10 - 12, 15, 24, 29, and 31 under Texas Government Code §2001.039, which directs state agencies to review and consider for reoption each of their rules. The proposed rule review was published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1467).

SUMMARY OF COMMENTS ON CHAPTERS UNDER REVIEW

TDI did not receive any comments on the chapters under review.

READOPTION OF CHAPTERS

TDI finds that the reasons for adopting these chapters continue to exist. TDI readopts the following chapters:

- Chapter 1, General Administration;
- Chapter 3, Life, Accident, and Health Insurance and Annuities;
- Chapter 8, Hazardous Condition;
- Chapter 10, Workers' Compensation Health Care Networks;
- Chapter 11, Health Maintenance Organizations;
- Chapter 12, Independent Review Organizations;
- Chapter 15, Surplus Lines Insurance;
- Chapter 24, Discount Health Care Program Principles of Regulation;
- Chapter 29, Guaranty Acts; and
- Chapter 31, Liquidation.

As part of the review, TDI determined that it will further review for repeals or amendments certain rule sections in the chapters subject to this rule review. TDI will formally propose all repeals and amendments under the Texas Administrative Procedures Act, Texas Government Code Chapter 2001.

TRD-202201776
James Person
General Counsel
Texas Department of Insurance
Filed: May 6, 2022



Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board (Board) has completed the review of Title 31, Texas Administrative Code, Part 17, Chapter 520, Subchapter B, Requirements to Receive State Funds or Administer State Programs, as required by the Texas Government Code §2001.039, Agency Review of Existing Rules. These rules were published for comment in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5441).

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency under Texas Government Code, chapter 2001, subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reasons for adopting or re-adopting the Board's Requirements to Receive State Funds or Administer State Programs rules continues to exist. The Board requested specific comments from interested persons on whether the reasons for adopting Title 31, Texas Administrative Code, Part 17, Chapter 520, Subchapter B, Requirements to Receive State Funds or Administer State Programs continue

to exist. In addition, the Board welcomed comments on any amendments that would improve the rules.

The Board received no comments in response to its request for comment published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5441). After internal review, the Board determined that the rules effectively allows the Board to accomplish its functions as directed by the Legislature.

The Board finds that the reasons for adopting Title 31, Texas Administrative Code, Part 17, Chapter 520, Subchapter B, Requirements to Receive State Funds or Administer State Programs, continue to exist and re-adopts the rules without amendments. Therefore, the Board re-adopts Chapter 520, Subchapter B, Requirements to Receive State Funds or Administer State Programs, in its entirety, under authority granted in Texas Agricultural Code §§ 201.020(a) and 203.012, which authorize the Board to adopt and enforce rules necessary for the performance of its functions as well as Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

The Board hereby certifies that the rule Chapter 520, Subchapter B, Requirements to Receive State Funds or Administer State Programs is re-adopted; has been reviewed by legal counsel and found to be a valid exercise of the Board's legal authority. It is therefore ordered by the Texas State Soil and Water Conservation Board Chapter 520, Subchapter B, Requirements to Receive State Funds or Administer State Programs, is hereby re-adopted under Texas Government Code §2001.039 with no changes.

TRD-202201790
Liza Parker
Legislative Liaison/Policy Analyst
Texas State Soil and Water Conservation Board
Filed: May 6, 2022



The Texas State Soil and Water Conservation Board (Board) has completed the review of Title 31, Texas Administrative Code, Part 17, Chapter 525, Subchapter A, Audits of Districts, as required by the Texas Government Code §2001.039, Agency Review of Existing Rules. These rules were published for comment in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5441).

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency under Texas Government Code, chapter 2001, subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reasons for adopting or re-adopting the Board's Audit Requirements for Soil and Water Conservation Districts rule continues to exist. The Board requested specific comments from interested persons on whether the reasons for adopting Title 31, Texas Administrative Code, Part 17, Chapter 525, Subchapter A, Audits of Districts continues to exist. In addition, the Board welcomed comments on any amendments that would improve the rule.

The Board received no comments in response to its request for comment published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5441). After internal review, the Board determined that the rules effectively allow the Board to accomplish its functions as directed by the Legislature.

The Board finds that the reasons for adopting Title 31, Texas Administrative Code, Part 17, Chapter 525, Subchapter A, Audits of Districts, continue to exist and re-adopts the rules without amendments. Therefore, the Board re-adopts Chapter 525, Subchapter A, Audits of Districts, in its entirety, under authority granted in Texas Agricultural Code

§§ 201.020(a) and 203.012, which authorize the Board to adopt and enforce rules necessary for the performance of its functions as well as Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

The Board hereby certifies that the rule Chapter 525, Subchapter A, Audits of Districts as re-adopted; has been reviewed by legal counsel and found to be a valid exercise of the Board's legal authority. It is therefore ordered by the Texas State Soil and Water Conservation Board Chapter 525, Subchapter A, Audits of Districts, is hereby re-adopted under Texas Government Code §2001.039 with no changes.

TRD-202201791

Liza Parker

Legislative Liaison/Policy Analyst

Texas State Soil and Water Conservation Board

Filed: May 6, 2022



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 26 TAC §745.115

Governmental Entity	Description of Exempt Programs
(1) Federal	<p>(A) <u>A facility operated on a federal installation, including military bases and Indian reservations; or</u></p> <p>(B) <u>A program that provides 24-hour care exclusively to individuals not lawfully present in the United States who are in the custody of the federal government.</u></p>
(2) State	<p>(A) A facility operated by the Texas Juvenile Justice Department;</p> <p>(B) A facility providing services solely for the Texas Juvenile Justice Department;</p> <p>(C) Any other correctional facility for children operated or regulated by another state agency or political subdivision;</p> <p>(D) A treatment facility or structured program for treating chemically dependent persons that is licensed by the Texas Health and Human Services Commission;</p> <p>(E) A youth camp licensed by the Texas Department of State Health Services;</p> <p>(F) A youth camp exempt from licensure by the Texas Department of State Health Services under Texas Health and Safety Code, §141.0021, because it is:</p> <p>(i) Operated by or on "a campus of an institution of higher education" or "a private or independent institution of higher education," as those terms are defined in Texas Education Code §61.003; and</p> <p>(ii) Regularly inspected by a local governmental entity for compliance with health and safety standards.</p>
(3) Municipal	<p>A recreation program for elementary age (5-13 years) children with the following criteria:</p> <p>(i) A municipality operates the program;</p>

	<p>(ii) The governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, although the governing body of a municipality with a population of at least 300,000 that has adopted standards by ordinance after public hearings at least twice may accept public comment through its Internet website for at least 30 days in lieu of having a public hearing;</p> <p>(iii) The program provides these standards to the parents of each program participant;</p> <p>(iv) The ordinances include child to caregiver ratios, minimum employee qualifications, minimum building, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards;</p> <p>(v) The program informs the parents that the state does not license the program; and</p> <p>(vi) The program does not advertise itself as a child care operation.</p>
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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Health and Safety Code and the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Pasadena Refining System, Inc.*;
Cause No. D-1-GN-20-001496, in the 53rd Judicial District Court,
Travis County, Texas.

Background: Defendant Pasadena Refining System, Inc. (PRSI) is the owner and operator of a petroleum refinery located at 111 Red Bluff Road, Pasadena, Harris County, Texas. The State filed a civil enforcement suit on behalf of the Texas Commission on Environmental Quality under the Texas Clean Air Act, the Texas Water Code, and related regulations against PRSI alleging unauthorized emissions of air contaminants and noncompliance with permitted operating standards. Specifically, TCEQ alleged that between 2013 and 2018, PRSI committed multiple violations of the operating standards and maximum allowable emissions limits governed by TCEQ-issued Federal Operating Permits and New Source Review Permits.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction which orders PRSI to implement internal policies and practices at the refinery to address its operating and reporting deficiencies, and to implement corrective actions to prevent unauthorized emissions of air contaminants; and awards the State \$1.1 million in civil penalties and \$35,000 in attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment and Permanent Injunction should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Erin Snody, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email: Erin.Snody@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202201828
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 10, 2022

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/16/22 - 05/22/22 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/16/22 - 05/22/22 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202201830
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 10, 2022

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 21, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 21, 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: 290 KICKAPOO DEVELOPMENT INCORPORATED; DOCKET NUMBER: 2021-0920-MWD-E; IDENTIFIER: RN109226522; LOCATION: Waller, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015483001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$9,375; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 755-6327; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: AOH ENTERPRISE LLC dba Tijuana Grocery; DOCKET NUMBER: 2021-1306-PST-E; IDENTIFIER: RN102443538; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) 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, and failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Arnold Oil Company Fuels, LLC dba Arnold Oil Fuels; DOCKET NUMBER: 2021-1044-MLM-E; IDENTIFIER: RN107839136; LOCATION: Midland, Midland County; TYPE OF FACILITY: petroleum products wholesaler; RULES VIOLATED: 30 TAC §324.4 and 40 Code of Federal Regulations (CFR) §279.22(b)(1) and (2), by failing to keep containers used to store used oil in good condition and not leaking; 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to label or clearly mark containers used to store used oil with the words "Used Oil"; 30 TAC §327.3(b), by failing to notify the agency as soon as possible but not later than 24 hours after the discovery of a reportable spill or discharge; 30 TAC §327.5(a) and §335.4, by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial and solid waste, and failing to immediately abate and contain a spill or discharge of petroleum products; and 30 TAC §334.127(a)(1) and TWC, §26.346(a), by failing to register all aboveground storage tanks in existence on or after September 1, 1989, with the agency; PENALTY: \$17,501; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(4) COMPANY: Avis Rent A Car System, LLC; DOCKET NUMBER: 2021-1610-PST-E; IDENTIFIER: RN102755337; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: vehicle rental location; RULES VIOLATED: 30 TAC §334.48(c) and §334.50(d)(1)(B), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks involved in the retail sale of petroleum substances used as motor fuel; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of McAllen; DOCKET NUMBER: 2021-1240-PST-E; IDENTIFIER: RN104777826; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL

OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: City of Opdyke West; DOCKET NUMBER: 2019-0815-MWD-E; IDENTIFIER: RN101456572; LOCATION: Levelland, Hockley County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of waste into or adjacent to any water in the state; 30 TAC §305.65 and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; 30 TAC §305.65 and §305.125(1) and (2), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012615001, Permit Conditions Number 4.c, by failing to submit a permit renewal application at least 180 days before the expiration date of the effective permit; 30 TAC §309.13(c)(2), by failing to meet the buffer zone requirements of a minimum distance of 500 feet from a ground potable water storage tank; 30 TAC §317.1(a)(3)(D), by failing to submit a summary transmittal letter to the Wastewater Permits Section and to the appropriate TCEQ Regional Office for all wastewater projects constructed in the state of Texas; 30 TAC §317.3(e)(5), by failing to provide an audiovisual alarm for all lift stations; and 30 TAC §317.7(e), by failing to provide the required plant protection; PENALTY: \$10,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$8,100; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(7) COMPANY: City of Rising Star; DOCKET NUMBER: 2021-1616-PWS-E; IDENTIFIER: RN101205573; LOCATION: Rising Star, Eastland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: \$237; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Roscoe; DOCKET NUMBER: 2021-1615-PWS-E; IDENTIFIER: RN101430924; LOCATION: Roscoe, Nolan 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 §290.122(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 executive director (ED) regarding the failure 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 ED for the July 1, 2018 - December 31, 2018, and the January 1, 2019 - June 30, 2019, monitoring periods; PENALTY: \$6,615; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Flint Hills Resources Corpus Christi, LLC; DOCKET NUMBER: 2021-1139-AIR-E; IDENTIFIER: RN100222744; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: crude oil handling site; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O3454, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O3454, GTC and Special Terms and Conditions Number 12, and THSC, §382.085(b),

by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$6,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,600; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: Gregory D. Church dba I-27 Industrial Park; DOCKET NUMBER: 2021-1565-PWS-E; IDENTIFIER: RN108220153; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(c)(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; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's three water wells into service; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(11) COMPANY: H & A ENTERPRISES INC dba Palmer Food Mart; DOCKET NUMBER: 2021-1580-PST-E; IDENTIFIER: RN101841757; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(g)(1) and (2) and (A)(i) and (ii), by failing to conduct the periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping by January 1, 2021, for underground storage tank systems installed before September 1, 2018; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: INDUSTRIAL GOLD RUSH LTD. dba Fuel City II; DOCKET NUMBER: 2021-1648-PST-E; IDENTIFIER: RN101566479; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report suspected releases to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$27,677; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: IZZAT & NAZIRA BUSINESS, INCORPORATED dba Sam's Market Place; DOCKET NUMBER: 2021-1392-PST-E; IDENTIFIER: RN101758837; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.226(2)(A), by failing to maintain for a period of two years a record of the results of any testing conducted at the gasoline dispensing facility in accordance with the provisions specified in 30 TAC §115.225; 30 TAC §334.48(g)(2)(A)(ii) and (h)(1)(A)(i) and (ii) and TWC, §26.3475(c)(2), by failing to conduct the initial spill prevention equipment testing by January 1, 2021 for underground storage tanks (USTs) brought into service before September 1, 2018, and failing to conduct the walkthrough inspection of the spill prevention equipment and release detection equipment every 30 days; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$6,970; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616;

REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Laxmi Brother LLC dba Triangle Food Mart; DOCKET NUMBER: 2021-1599-PST-E; IDENTIFIER: RN102361904; LOCATION: Orange, Orange 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: \$2,438; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: MERITAGE HOMES OF TEXAS, LLC; DOCKET NUMBER: 2021-1121-WQ-E; IDENTIFIER: RN110918257; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXR1509AZ, Part III, Section G.1(e), by failing to install and maintain best management practices at the site, resulting in an unauthorized discharge; PENALTY: \$3,562; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Open Range Enterprises, LLC dba 4R Country Stores; DOCKET NUMBER: 2021-1614-PST-E; IDENTIFIER: RN103017414; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: out-of-service underground storage tank; RULES VIOLATED: 30 TAC §334.50(b)(1) and (2)(A), and §334.54(c)(1) and TWC, §26.3475(a) and (c)(1), by failing to monitor the temporarily out-of-service underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the temporarily out-of-service UST system; PENALTY: \$3,494; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: PAXTON WATER SUPPLY CORPORATION; DOCKET NUMBER: 2021-1635-PWS-E; IDENTIFIER: RN101211845; LOCATION: Center, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(2) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director in writing of the addition of treatment chemicals, including long-term treatment changes, that will impact the corrosivity of the water; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's Well Number 3; and 30 TAC §290.45(b)(1)(D)(i), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: \$2,958; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Peter Thiessen dba Cotton Land RV Park; DOCKET NUMBER: 2021-1636-PWS-E; IDENTIFIER: RN111349007; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 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; PENALTY: \$563; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: SEEK CONCEPT, LLC dba Steves Food Mart; DOCKET NUMBER: 2021-1404-PST-E; IDENTIFIER:

RN102357019; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Siesta Shores Water Control and Improvement District; DOCKET NUMBER: 2021-1414-PWS-E; IDENTIFIER: RN101451599; LOCATION: Zapata, Zapata County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; 30 TAC §290.111(e)(5)(C)(iii), by failing to conduct grab sampling every four hours in the event the facility's continuous turbidity monitoring equipment malfunctions, but not for more than 14 working days; and 30 TAC §290.45(b)(2)(B) and Texas Health and Safety Code, §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gallons per minute per connection under normal rated design flow; PENALTY: \$898; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202201822

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 10, 2022



Notice of Correction to Agreed Order Number 16

In the July 2, 2021, issue of the *Texas Register* (46 TexReg 4033), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 16, for THOMAS TRACTOR WORKS, INC, Docket Number 2021-0115-AIR-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$2,500."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202201823

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 10, 2022



Notice of Opportunity to Comment on a Shutdown/Default Order 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 Order (S/DO). 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 **June 21, 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 the 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 June 21, 2022**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Lumbini Enterprise LLC dba Neighborhood Food Mart; DOCKET NUMBER: 2019-1551-PST-E; TCEQ ID NUMBER: RN102269818; LOCATION: 2509 South Bell Boulevard, Cedar Park, Williamson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$8,195; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-202201824

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 10, 2022



Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission

may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. 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 **June 21, 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 the 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 June 21, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Steven Ray Meza and Samantha Meza; DOCKET NUMBER: 2020-0513-MLM-E; TCEQ ID NUMBER: RN110782638; LOCATION: 598 Kelley Road, Refugio, Refugio County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal 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: \$7,416; STAFF ATTORNEY: John S. Merculief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

TRD-202201825
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 10, 2022



Texas Health and Human Services Commission

Public Notice - Texas State Plan for Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment Comprehensive-Care Program (EPSDT-CCP) Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Early and Periodic Screening, Diagnosis and Treatment under Title XIX of the Social Security Act. The proposed amendment is effective October 1, 2022.

The proposed amendment will update School Health and Related Services (SHARS) pages within the Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment Comprehensive-Care Program (EPSDT-CCP) section of the state plan. The amendment will allow audiology services prescribed to Medicaid-en-

rolled students with Section 504 Plans to be reimbursed under the SHARS program. This proposed amendment for audiology services is to comply with House Bill (H.B.) 706, 86th Legislature, Regular Session, 2019, and H.B. 3607, 87th Legislature, Regular Session, 2021.

The amendment will also add interim claiming requirements, remove milestone requirements, and update interim rate calculation and payment language. It will change provisions relating to cost report review and adjustments. The amendment to the methods and standards for setting interim payment rates for services is to implement changes to increase the integrity of the program and allow for additional detail to be collected to increase the specificity of submitted data related to services reimbursed through the SHARS program, for both individual recipients and specific services.

There may be a fiscal impact 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.

Rate Hearing. No rate hearing required as rates will not change.

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 Coordinator, 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 email at Medicaid_Chip_SPA_Inquiries@hhsc.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

Attn: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 Guadalupe St

Austin, Texas 78751

Fax

Attention: Provider Finance at (512) 730-7475

Email

ProviderFinanceSHARS@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 the 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.

TRD-202201777

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 6, 2022

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Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft 2022 State of Texas Consolidated Plan: One-Year Action Plan

The Texas Department of Housing and Community Affairs (TDHCA) will hold one public hearing during a 31-day Public Comment period to accept public comment on the draft 2022 State of Texas Consolidated Plan: One-Year Action Plan (the Plan). The Public Comment period for the draft Plan will be held Monday, May 16, 2022 - Wednesday, June 15, 2022.

The one public hearing for the 2022 One-Year Action Plan is scheduled to take place as follows:

Wednesday, June 1, 2022 - 2:00 p.m.

Stephen F. Austin Building

Room 172

1700 Congress Ave, Austin, Texas 78701

TDHCA, Texas Department of Agriculture (TDA), and Texas Department of State Health Services (DSHS) prepared the Draft 2022 State of Texas Consolidated Plan: One-Year Action Plan (the Plan) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program (CDBG) by TDA, the Housing Opportunities for Persons with AIDS Program (HOPWA) by DSHS, and the Emergency Solutions Grants (ESG) Program, the HOME Investment Partnerships (HOME) Program, and the National Housing Trust Fund (NHTF) by TDHCA.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2022. The Program Year begins on September 1, 2022, and ends on August 31, 2023. The Plan also illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2020-2024 State of Texas Consolidated Plan.

The Plan may be accessed from TDHCA's Public Comment Web page at: <http://www.tdhca.state.tx.us/public-comment.htm>. The public comment period for the Plan will be open from Monday, May 16, 2022, through Wednesday, June 15, 2022. Anyone may submit comments on the Plan in written form or oral testimony at the June 1, 2022, public hearing. In addition, written comments concerning the Plan may be submitted in the following ways:

1. by mail to: The Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941,
2. by email to: info@tdhca.state.tx.us

Comments may be submitted at any time during the comment period. Comments must be received no later than Wednesday, June 15, 2022, at 5:00 p.m. Austin local time.

Individuals who require auxiliary aids or services at the public hearing should contact Elizabeth Yevich, at (512) 463-7961 or Relay Texas at 1-800-735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Danielle Leath by phone at (512) 475-4606 or by email at danielle.leath@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Danielle Leath al siguiente número (512) 475-4606 o enviarle un correo electrónico a danielle.leath@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202201787

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: May 6, 2022

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Asistensi Global Insurance, Inc., a foreign life, accident and/or health insurance company. The home office is in Orlando, Florida.

Application to do business in the state of Texas for MTAW Insurance Company, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application for Metromile Insurance Company, a foreign fire and/or casualty company, to change its name to Lemonade Property and Casualty Insurance Company. The home office is in San Francisco, California.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202201833

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: May 11, 2022

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Texas Lottery Commission

Scratch Ticket Game Number 2404 "Sizzling Hot \$100,000"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2404 is "SIZZLING HOT \$100,000". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2404 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2404.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,

22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$250, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2404 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR

35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRT0
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2404), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2404-0000001-001.

H. Pack - A Pack of the "SIZZLING HOT \$100,000" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack.

All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SIZZLING HOT \$100,000" Scratch Ticket Game No. 2404.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "SIZZLING HOT \$100,000" Scratch Ticket Game is determined once the latex on the Scratch Ticket

is scratched off to expose fifty-six (56) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the HOT NUMBERS Play Symbols, the player wins the prize for that number. If the player matches any of the YOUR NUMBERS Play Symbols to the HOT BONUS NUMBER Play Symbol, the player wins 10 TIMES the prize for that number. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-six (56) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-six (56) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the fifty-six (56) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the fifty-six (56) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty-five (25) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning twenty-five (25) times, with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. No matching HOT NUMBERS Play Symbols will appear on a Ticket.

G. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

H. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$5 and 05, \$10 and 10 and \$20 and 20).

I. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, the HOT NUMBERS Play Symbols and HOT BONUS NUMBER Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. Tickets winning more than one (1) time will use as many HOT NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure

L. A YOUR NUMBERS Play Symbol that matches the HOT BONUS NUMBER Play Symbol will win 10 TIMES the prize for that number and will win as per the prize structure.

M. The HOT BONUS NUMBER Play Symbol will never match a HOT NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "SIZZLING HOT \$100,000" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas

Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SIZZLING HOT \$100,000" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SIZZLING HOT \$100,000" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "SIZZLING HOT \$100,000" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "SIZZLING HOT \$100,000" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2404. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2404 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	752,000	9.57
\$10.00	672,000	10.71
\$20.00	208,000	34.62
\$50.00	96,000	75.00
\$100	27,000	266.67
\$250	2,560	2,812.50
\$500	2,100	3,428.57
\$1,000	50	144,000.00
\$100,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.09. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2404 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2404, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202201838
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 11, 2022

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Texas Department of Motor Vehicles
 Correction of Error

The Texas Department of Motor Vehicles published a proposal for new §211.6 in the April 22, 2022, issue of the *Texas Register* (47 TexReg 2122). Due to an error by the department, the end of the public comment period was listed as May 22, 2020. The text of the proposal should have read as follows:

"If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on May 22, 2022."

TRD-202201826

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North Central Texas Council of Governments

Request for Information - Platform Available to Measure the Performance of the Traffic Signals in the Dallas-Fort Worth Region

The North Central Texas Council of Governments (NCTCOG), in coordination with transportation partner agencies through a Request for Information (RFI), is seeking letters of interest and product information for a platform with data available to measure the performance of the traffic signals in the Dallas-Fort Worth region. The desired platform should be capable to track performance measures to monitor and track signal performance by user-defined days and hour. The performance measures will indicate corridors as candidates for applying traffic signal improvements, such as retiming. The desired platform should be able to track performance measures such as intersection de-

lay; red/green arrival ratio; travel times; turning movement counts; and pass through. The platform will require multiple individual user accounts from one or multiple different municipalities. It is envisioned at this time that individual municipalities will be responsible for individual agency accounts, but collectively overseen by NCTCOG staff. The platform should include populated data for all traffic signals in the DFW region and should be made available to NCTCOG and partner agencies to assess the performance of all traffic signals.

Information must be received no later than 5:00 p.m., Central Time, on Friday, June 17, 2022, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Information will be available at www.nctcog.org/rfp by the close of business on Friday, May 20, 2022.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202201775

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: May 6, 2022



Workforce Solutions for the Heart of Texas

Request for Quotes (RFQ #13220401): Short-Term Technical Skills Training Services

The Heart of Texas Workforce Development Board, Inc. (Board) dba Workforce Solutions for the Heart of Texas is seeking quotes for short-term technical skills training services. The Board's purpose is to assist eligible individuals overcome unemployment setbacks offering training services that aid an individual in earning industry-recognized post-secondary credentials to help to begin, continue, or restart their careers. Workforce Solutions for the Heart of Texas is the administrative entity for programs funded by the Texas Workforce Commission and Depart-

ment of Labor. The Workforce Solutions for the Heart of Texas serves McLennan, Falls, Bosque, Freestone, Limestone and Hill Counties.

The Board seeks to procure and compile a listing of approved training providers that shall provide allowable short-term technical skills training that is either offered through in-person training, online training or a hybrid combination. The initial contract period will begin on July 1, 2022.

The Request for Quotes (RFQ) may be obtained by contacting Erin Rea at (254) 296-5386 or via email at erin.rea@hotworkforce.com. The RFQ is also available on the Workforce Solutions for the Heart of Texas website. A virtual Bidders Conference will be held will be held via Zoom on May 31, 2022, at 10:00 a.m. (CST). To receive the access code and password please e-mail erin.rea@hotworkforce.com. Attendance is not mandatory, but strongly recommended.

Proposals are due no later than 4:00 p.m. (CST) Tuesday, June 14, 2022 to:

Workforce Solutions for the Heart of Texas

Attn: Erin Rea, Procurement Officer

erin.rea@hotworkforce.com

<http://www.hotworkforce.com>

The Heart of Texas Workforce Development Board, Inc. is an equal opportunity employer/programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) (800) 735-2989 / (800) 735-2988 (voice).

TRD-202201832

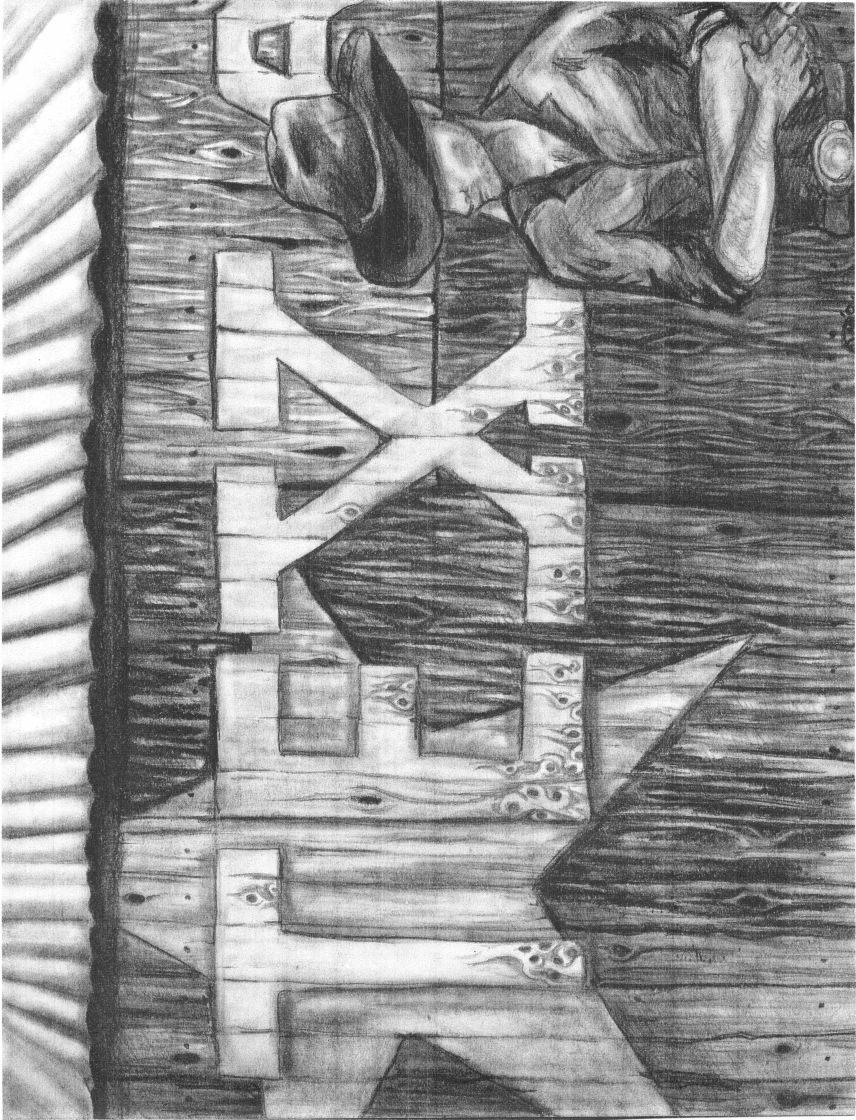
Anthony Billings

Executive Director

Workforce Solutions for the Heart of Texas

Filed: May 10, 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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