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# TEXAS REGISTER

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# TEXAS REGISTER

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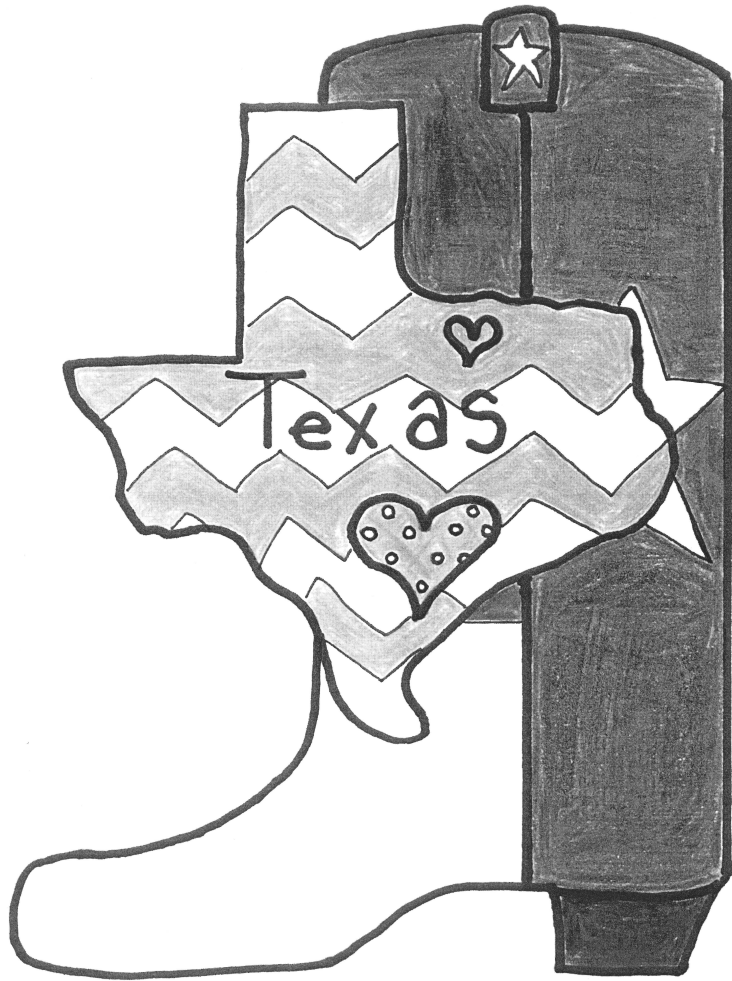
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# THE GOVERNOR

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

## Appointments

### Appointments for July 6, 2022

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Arun Agarwal of Dallas, Texas (replacing Abidali Z. "Abid" Neemuchwala of Coppell).

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Adrian S. Cannady of Belton, Texas (replacing Robert "Drayton" McLane, Jr. of Temple).

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Samuel D. "David" Deanda, Jr. of Mission, Texas (replacing James P. "J. Pat" Hickman of Canyon).

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Kathryn M. "Katie" Farmer of Fort Worth, Texas (pursuant to Government Code Sec. 481.024).

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, L. Frederick "Rick" Francis of El Paso, Texas (replacing Woodley L. "Woody" Hunt of El Paso).

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Mauricio Gutierrez of Houston, Texas (replacing Scott M. Prochazka of Houston).

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, George H. "Trey" Henderson, III of Lufkin, Texas (pursuant to Government Code Sec. 481.024).

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Peter J. Holt of San Antonio, Texas (replacing Bryan Sheffield of Austin).

Appointed to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Eduardo Margain of Austin, Texas (replacing James E. "Jim" Lentz III of Westlake).

Appointed as an Ex-Officio Member/Non-Voting Member to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Adriana R. Cruz of Austin, Texas (replacing Robert B. "Bryan" Daniel of Georgetown).

Designated as chair of the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Vicki A. Hollub of Galveston (Ms. Hollub is replacing Robert "Drayton" McLane, Jr. of Temple).

### Appointments for July 7, 2022

Appointed to the San Jacinto River Authority Board of Directors for a term to expire October 16, 2025, Stephanie A. Johnson of Montgomery, Texas (replacing Kaaren Cambio of Kingwood, who resigned).

### Appointments for July 11, 2022

Appointed to the Texas Water Development Board for a term to expire February 1, 2027, George B. Peyton, V of West Lake Hills, Texas (replacing Peter M. Lake of Austin, who resigned).

Greg Abbott, Governor

TRD-202202675



## Executive Order GA 41

### *Relating to returning illegal immigrants to the border.*

WHEREAS, securing the international border is the federal government's responsibility, but President Biden has refused to enforce the immigration laws enacted by Congress, including statutes mandating detention of certain immigrants who have claimed asylum or committed a crime; and

WHEREAS, the cartels refer to these open-border policies as *la invitación* ("the invitation"), reflecting the perception that President Biden welcomes immigrants to make the dangerous trek across our southern border; and

WHEREAS, an immigrant's journey to the United States can even prove fatal, as evidenced by the recent discovery of 53 dead bodies inside a smuggler's truck, and by a recent report from a United Nations agency describing our southern border as the deadliest land crossing in the world during President Biden's first year in office; and

WHEREAS, at least 42 subjects on the terrorist watchlist have been arrested while attempting to cross the border illegally since January 2021, and an unknown number have crossed while evading detection, demonstrating that an insecure border is a pathway for terrorists to enter the United States; and

WHEREAS, President Biden's failure to protect our border has necessitated action by the State of Texas to ensure public safety and to defend against violations of its sovereignty and territorial integrity; and

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, which has been amended and renewed in each subsequent month effective through today, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, through Operation Lone Star, I have deployed thousands of brave men and women from the Texas National Guard and the Texas Department of Public Safety to secure the border, to enforce the laws of Texas, and to prevent, detect, and interdict transnational criminal behavior; and

WHEREAS, by employing a variety of strategies, Operation Lone Star has resulted in thousands of apprehensions and criminal arrests, along with the seizure of thousands of weapons, hundreds of millions of lethal doses of fentanyl, and other contraband; and

WHEREAS, the Biden Administration's decision to end Title 42 expulsions, which has been halted by a federal court, and to terminate the Remain-in-Mexico policy, will invite the cartels to smuggle millions more illegal immigrants into Texas, as evidenced by the Biden Administration's projection that terminating Title 42 expulsions will result in as many as 18,000 immigrant apprehensions per day; and

WHEREAS, President Biden's border crisis hit a new record in May 2022, which saw the largest number of immigrants arrested or encountered along our southern border since U.S. Customs and Border Protection began keeping track in 2000, and these unprecedented numbers are overwhelming local communities across Texas; and

WHEREAS, President Biden's reckless refusal to secure the border will provide material support to the cartels, allow them to smuggle more dangerous people, drugs, and weapons into Texas, and embolden cartel gunmen to continue shooting at state and federal officials; and

WHEREAS, President Biden's failure to faithfully execute the immigration laws enacted by Congress confirms that he has abandoned the covenant, in Article IV, § 4 of the U.S. Constitution, that "[t]he United States ... shall protect each [State in this Union] against Invasion," and thus has forced the State of Texas to build a border wall, deploy state military forces, and enter into agreements as described in Article I, § 10 of the U.S. Constitution to secure the State of Texas and repel the illegal immigration that funds the cartels; and

WHEREAS, in the Texas Disaster Act of 1975, the Legislature charged the Governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly authorized the Governor to "issue executive orders ... hav[ing] the force and effect of law" under Section 418.012; and

WHEREAS, the Governor can call on state military forces to enforce the law under Article IV, § 7 of the Texas Constitution and Sections 431.111 and 437.002 of the Texas Government Code; and

WHEREAS, an immigrant commits a federal crime under 8 U.S.C. § 1325(a)(1) by entering the United States between the ports of entry that have been designated as field offices by federal immigration officers; and

WHEREAS, the Supreme Court's opinion in *Arizona v. United States* specifically does not "address whether reasonable suspicion of illegal entry or another immigration crime would be a legitimate basis for prolonging a detention, or whether this too would be preempted by federal law," 567 U.S. 387,414 (2012);

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby authorize and empower the Texas National Guard and the Texas Department of Public Safety to respond to this illegal immigration by apprehending immigrants who cross the border between ports of entry or commit other violations of federal law, and to return those illegal immigrants to the border at a port of entry.

This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 7th day of July, 2022.

Greg Abbott, Governor

TRD-202202566

◆ ◆ ◆  
Proclamation 41-3913

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

WHEREAS, I, GREG ABBOTT, Governor of Texas, do hereby certify that the shooting that occurred on May 24, 2022, at Robb Elementary School in the City of Uvalde has caused widespread and severe damage, injury, and loss of life in Uvalde County, Texas; and

WHEREAS, those same conditions continue to exist in Uvalde County;

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of June, 2022.

Greg Abbott, Governor

TRD-202202603

◆ ◆ ◆  
Proclamation 41-3914

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

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that exceptional drought conditions pose a threat of imminent disaster in Andrews, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brewster, Briscoe, Brown, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Castro, Chambers, Childress, Cochran, Coke, Coleman, Colorado, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crosby, Culberson, Dallam, Dawson, Deaf Smith, DeWitt, Dickens, Dimmit, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Fort Bend, Franklin, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Hartley, Haskell, Hays, Hidalgo, Hill, Hockley, Hood, Howard, Hudspeth, Irion, Jackson, Jeff Davis, Jefferson, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, La Salle, Lamb, Lampasas, Lavaca, Live Oak, Llano, Loving, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Midland, Mills, Mitchell, Moore, Motley, Navarro, Nolan, Oldham, Orange, Parker, Parmer, Pecos, Potter, Presidio, Randall, Real, Reeves, Refugio, Roberts, Rockwall, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Tom Green,



Travis, Upton, Uvalde, Val Verde, Victoria, Waller, Ward, Webb, Wharton, Wichita, Wilbarger, Williamson, Wilson, Winkler, Yoakum, and Zavala counties; and

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat of widespread or severe damage, injury, or loss of life or property;

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

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or

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

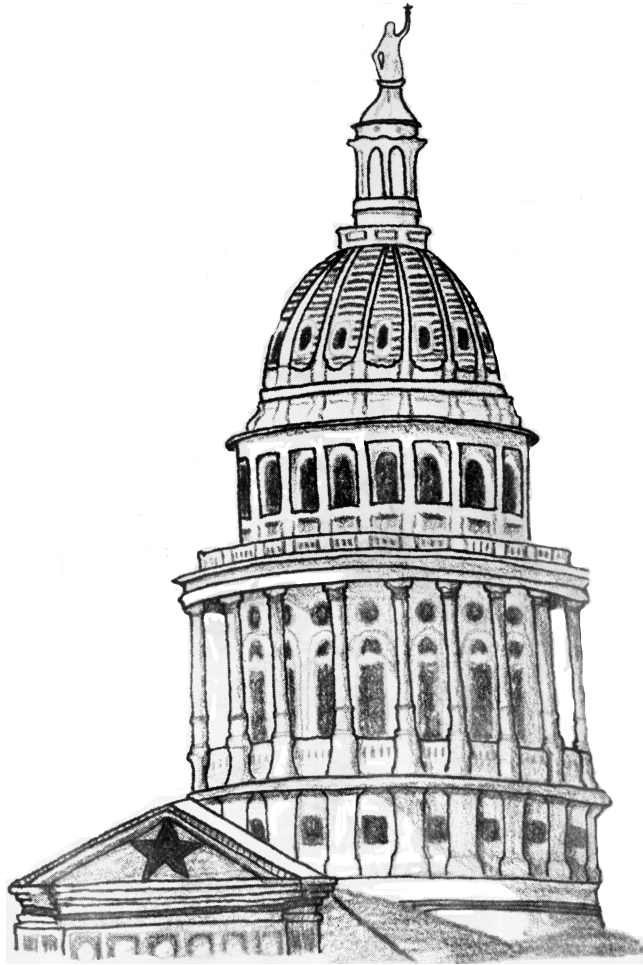
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 8th day of July, 2022.

Greg Abbott, Governor

TRD-202202604





# THE ATTORNEY GENERAL

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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>.)

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## Requests for Opinions

**RQ-0466-KP**

### Requestor:

The Honorable Donna Campbell, M.D.  
Chair, Committee on Veterans Affairs & Border Security  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

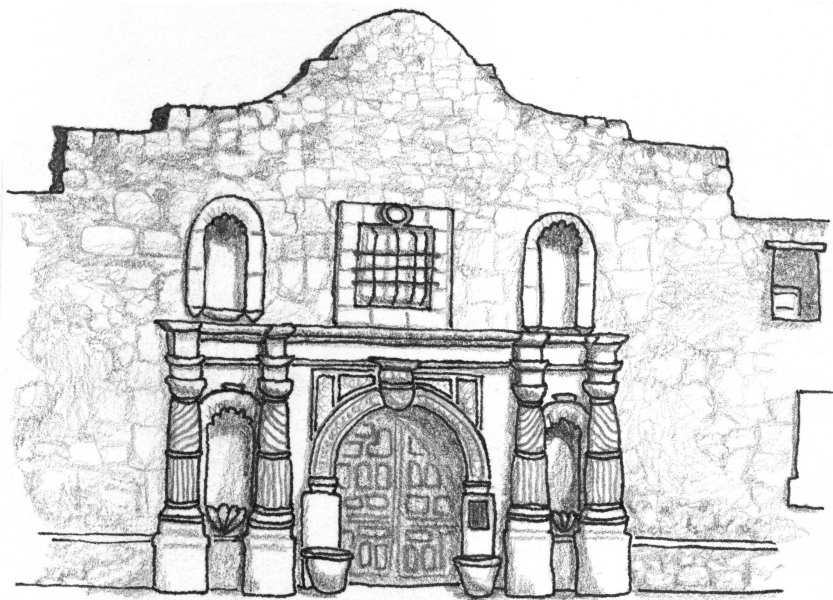
Re: Whether a corporate entity can serve as a substitute trustee for purposes of conducting a mortgage foreclosure sale under Property Code chapter 51 (RQ-0466-KP)

## Briefs requested by August 8, 2022

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

TRD-202202609  
Austin Kinghorn  
General Counsel  
Office of the Attorney General  
Filed: July 12, 2022





# 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 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER G. APPLY TEXAS ADVISORY COMMITTEE

##### 19 TAC §1.130

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter G, §1.130, concerning Apply Texas Committee Membership and Officers. Specifically, this amendment will change the number of representatives from public community, technical, or state colleges with enrollment between 10,000 - 15,999 students from four to three and add one school district representative to the advisory committee.

The advisory committee provides the Board with advice and recommendations regarding the Apply Texas Common Application System. This change will align with the agency's authority under Texas Education Code, Section 51.762, which requires the Coordinating Board to adopt by rule a common admission application in consultation with high school counselors and an advisory committee composed of representatives of general academic teaching institutions, junior college districts, public state colleges, public technical institutes, and private or independent institutions of higher education, and all institutions of higher education that admit freshman-level students.

Laura Brennan, Assistant Commissioner for College and Career Advising, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Laura Brennan, Assistant Commissioner for College and Career Advising, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will include school district representation on the common application advisory committee. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Laura Brennan, Assistant Commissioner for College and Career Advising, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [CRI@highered.texas.gov](mailto:CRI@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 51.762, which requires the Coordinating Board to adopt by rule a common admission application form in consultation with high school counselors and an advisory committee composed of representatives of general academic teaching institutions, junior college districts, public state colleges, public technical institutes, and private or independent institutions of higher education, and all institutions of higher education that admit freshman-level students.

The proposed amendment affects Texas Education Code Sections 51.762, 51.763 and 61.0331(1) and rules in Title 19, Texas Administrative Code, Chapter 1 and Chapter 4, Section 4.10.

#### §1.130. *Committee Membership and Officers.*

(a) Membership shall consist of admissions administrators from Texas public institutions of higher education and participating private or independent institutions of higher education, all as defined by Texas Education Code, §61.003, that use the Apply Texas System.

(b) Membership on the committee should include:

- (1) four representatives from public universities with enrollment of more than 30,000 students in previous fall semester;
- (2) three representatives from public universities with enrollment between 10,000 - 30,000 students in previous fall semester;
- (3) three representatives from public universities with enrollment between 0 - 9,999 students in previous fall semester;

(4) one representative from public universities using the graduate application in the Apply Texas System not selected from paragraphs (1) - (3) of this subsection;

(5) three representatives from public community, technical, or state colleges with enrollment of more than 16,000 students in previous fall semester;

(6) three [~~four~~] representatives from public community, technical, or state colleges with enrollment between 10,000 - 15,999 students in previous fall semester;

(7) three representatives from public community, technical, or state colleges with enrollment between 0 - 9,999 students in previous fall semester;

(8) two representatives from participating private or independent institutions; [~~and~~]

(9) one undergraduate student representative; and [-]

(10) one school district representative.

(c) Interested persons, such as members of the Texas Association of Collegiate Registrars and Admissions Officers, Council of Public University Presidents and Chancellors, Texas Association of Community Colleges, Independent Colleges and Universities of Texas and legislative and governmental relations staff shall be regularly advised of committee meetings.

(d) In accordance with the Texas Government Code, §2110.002(a), the number of committee members shall not exceed twenty-four (24).

(e) Members of the committee shall annually select co-chairs, one from a four-year and one from a two-year institution, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) Members shall serve staggered terms of up to three years.

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 July 11, 2022.

TRD-202202571

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: August 21, 2022

For further information, please call: (512) 427-6585



## CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §§2.1 - 2.11

The Texas Higher Education Coordinating Board (Board) proposes a new chapter in its rules in Title 19, Texas Administrative Code, Part 1, Chapter 2, concerning academic planning, policy, and programs.

The Board rules governing program approval are currently located in multiple chapters of the Texas Administrative Code. While, over time, the Board has reviewed and updated the program approval process on an ad hoc basis, the Board has

not conducted a comprehensive, holistic review of these rules and policies in recent years. As a result, it may be challenging for an institution to determine which rules and processes it must follow to obtain approval for each program. Through this rule revision, the Board seeks to create an efficient, streamlined, coherent, and transparent process for an institution to quickly identify the steps necessary to obtain approval and maintain compliance.

This chapter will become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules are effective for a proposal when submitted by the institution on or after September 1, 2023. All other rules, including rules not related to program approval, will take effect September 1, 2023. The Board will later repeal the existing, superseded rules.

Proposed new rules in Title 19, Texas Administrative Code, Part 1, Chapter 2, Subchapter A, §§2.1 - 2.11, concerning the general provisions for chapter 2, will set out the policies and procedures institutions must follow to make administrative requests related to academic planning, policy, and programs. Specifically, this new section will contain definitions that apply to the entire chapter, explain the Board's approval endpoints for various request types, outline general broadly applicable quality criteria all academic programs must meet, and similar matters.

The General Provisions subchapter contains critical criteria applying uniformly to all administrative and program request types. The provisions in this subchapter provide an important foundational basis for the Board to carry out the responsibilities to regulate higher education assigned by the legislature. This rule structure enables the Board to carry out these duties with uniformity and consistency and gives institutions predictable processes and timelines.

Texas Education Code §61.051 tasks the Board with coordinating the efficient and effective use of higher education resources and avoiding unnecessary duplication, and also with implementing the state's long-range master plan for higher education. Texas Education Code §61.0512 states that a public institution of higher education may not offer any new degree program without Board approval. The Board maintains the list of degrees and certificates with official approval under this statute in the institution's Program Inventory. Texas Education Code §61.035 gives the Board authority to conduct compliance monitoring to ensure the accuracy of information reported by institutions of higher education and used for policymaking decisions. Texas Education Code §61.003 contains definitions commonly used in higher education regulation.

Rule 2.1, Purpose, sets out the purpose of the chapter as a whole, to establish governance processes for academic and workforce program planning, approval, and implementation.

Rule 2.2, Authority, lists the sections of the Texas Education Code that grant the Board authority over academic planning and program approvals.

Rule 2.3, Definitions, lists definitions broadly applicable to all subchapters of chapter 2. This rule uses Texas Education Code §61.003 to define categories of institutions.

Rule 2.4, Types of Approval Required, lays out four approval pathways at the agency for institutions submitting administrative and program requests. The first, Notification Only, is for minor requests, and states that approval is obtained after the

institution submits a notification and obtains confirmation from Board Staff. The second, Assistant Commissioner Approval, requires Assistant Commissioner approval for requests and has two subcomponents, Regular Review and Expedited Review. The third, Commissioner Approval, requires approval by the Commissioner of Higher Education. The fourth, Board Approval, requires approval by the Higher Education Coordinating Board's governing body.

Rule 2.5, General Criteria for Program Approval, contains a list of nine general criteria broadly applicable to all new program requests. These general criteria align with several statutory provisions: Texas Education Code §61.0512, which requires the Board to consider program need, financing, faculty and other resources, and academic standards when reviewing programs; and Texas Education Code §61.051, which tasks the Board with developing the state's long-range master plan for higher education and pursuing its strategic implementation through policy-making.

Rule 2.6, Administrative Completeness, lists the required criteria for a submission or request from an institution to be deemed "administratively complete." This rule allows the Board to carry out the requirement in Texas Education Code §61.0512(a) that the Board must specify by rule the elements that constitute a completed application for a new program and make a determination of administrative completeness.

Rule 2.7, Informal Notice and Comment on Proposed Local Programs, creates an opportunity for other institutions of higher education to submit a comment related to program proposals submitted by nearby institutions. This notice and comment period provides a mechanism for the Board to collect information related to whether the program is needed by the state and local community and whether it unnecessarily duplicates existing offerings. The legislature has made program need a mandatory evaluation criterion for new programs under Texas Education Code §61.0512(c).

Rule 2.8, Time Limit on Implementing Approved New Programs or Administrative Changes, establishes a time limit on the effectiveness of Board approvals. This provision ensures that the information used to grant the approval, including program need, remains current before a program is implemented.

Rule 2.9, Revisions and Modifications to an Approved Program, describes the process institutions must follow to notify the Board about substantive and non-substantive revisions and modifications to approved programs and administrative structure. The Board maintains the list of degrees and certificates with official approval under Texas Education Code §61.0512 in each institution's Program Inventory. This rule allows institutions to make notifications necessary to ensure that their official Program Inventories reflect accurate and up-to-date information about their offerings. In addition, this rule allows the Board to process information related to institutions' administrative units, necessary for those institutions with a statutory obligation to submit this information (see, for example, Texas Education Code §109A.002(b), stating that Angelo State University cannot institute a new department or school without prior approval of the Board).

Rule 2.10, Audit and Non-Compliance, establishes authority for Board Staff to audit institutions for compliance with the terms of its approval. Texas Education Code §61.035 gives the Board authority to conduct compliance monitoring to ensure the accuracy of information reported by institutions of higher education and used for policymaking decisions. This rule creates a mech-

anism limited to that within the agency's authority to ensure that each program is operating within the bounds of the law and its approval.

Rule 2.11, Effective Date of Rules, states that the rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules become effective for a proposal submitted on or after September 1, 2023. Rules not related to program approval will take effect September 1, 2023.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections include closer adherence to statute, a more comprehensive and navigable framework for processing administrative requests from institutions of higher education, and gathering additional program-related data necessary for workforce planning. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, TX 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for thirty (30) days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in pro-

gram offerings, faculties, and physical plants. The rules implement Texas Education Code §61.051, which requires, and provides the Board with the authority to, coordinate the efficient and effective use of higher education resources and avoiding unnecessary duplication, and also with implementing the state's long-range master plan for higher education; Texas Education Code §61.0512, which provides the Board with the authority to approve new degree and certificate programs; and Texas Education Code §61.035, which provides the Board with the authority to conduct compliance monitoring. These rules also implement Texas Education Code chapter 130, subchapter L, which authorizes public junior colleges to offer baccalaureate degrees.

The proposed new rules affect Texas Education Code §§61.003 and chapter 130, subchapter L, which authorizes public junior colleges to offer baccalaureate degrees.

### §2.1. Purpose.

This chapter governs academic and workforce program planning, approval, and implementation.

### §2.2. Authority.

Authority for this section comes from Texas Education Code §61.003, which contains several definitions for terms used throughout this chapter; and Tex. Educ. Code §61.0512, which gives the board permission to authorize new academic programs and sets certain timelines for approval processes. Tex. Educ. Code §61.035 gives the board authority to conduct compliance monitoring to ensure the accuracy of data reported by institutions of higher education and used for policymaking decisions. Other relevant provisions of law include Tex. Educ. Code, chapter 130, subchapter L, which contains information related to baccalaureate degrees at two-year institutions.

### §2.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Administrative Unit--A department, college, school, or other unit at an institution of higher education, which has administrative authority over degree or certificate programs.

(2) Academic Course Guide Manual (ACGM--The manual that provides the official list of approved courses for general academic transfer to public universities offered for funding by public community, state, and technical colleges in Texas.

(3) Academic Program or Program--A type of degree program leading to a bachelor's degree or higher.

(4) Applied Baccalaureate Degree Program--Builds on an Associate of Applied Science (A.A.S.) degree, combined with enough additional core curriculum courses and upper-level college courses to meet the minimum semester credit hour requirements for a bachelor's degree. The degree program is designed to grow professional management skills of the learner and meet the demand for leadership of highly technical professionals in the workplace. May be called a Bachelor of Applied Arts and Science (B.A.A.S.), Bachelor of Applied Technology (B.A.T.) or Bachelor of Applied Science (B.A.S.).

(5) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(6) Board Staff--Staff of the Texas Higher Education Coordinating Board who perform the Texas Higher Education Coordinating Board's administrative functions and services.

(7) Career Technical/Workforce Program--An applied associate degree program or a certificate program for which semester

credit hours, quarter credit hours, or continuing education units are awarded, and which is intended to prepare students for immediate employment or a job upgrade in a specific occupation.

(8) Certificate program--Unless otherwise specified in these rules for the purpose of this chapter, certificate means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle the student to a certificate or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level. Under this chapter, certificate includes a post-baccalaureate certificate, and excludes an associate degree unless otherwise provided.

(9) CIP Codes--See "Texas Classification of Instructional Programs (CIP) Coding System."

(10) Commissioner--The Commissioner of Higher Education.

(11) Contact hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(12) Continuing Education Unit (CEU)--Basic unit for continuing education courses. One continuing education unit (CEU) is 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(13) Credential--A grouping of subject matter courses or demonstrated mastery of specified content which entitle a student to documentary evidence of completion. This term encompasses certificate programs, degree programs, and other kinds of formal recognitions such as short-term workforce credentials or a combination thereof.

(14) Degree program--Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle that student to an associate's, bachelor's, master's, doctoral, or professional degree.

(15) Degree Title--Name of the degree and discipline under which one or more degree programs may be offered. A degree title usually consists of the degree designation (e.g., Bachelor of Science, Master of Arts) and the discipline specialty (e.g., History, Psychology).

(16) Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(17) Embedded Credential--A program of study enabling a student to earn a credential that is wholly embedded within a degree program.

(18) Field of Study Curriculum--A set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution, as defined in chapter 4, subchapter B, §4.23(7) of this title (relating to Definitions).

(19) Master's Degree Program--The first graduate level degree, intermediate between a Baccalaureate degree program and Doctoral degree program.

(20) New Content--Content that the institution does not currently offer at the same instructional level as the proposed program.

(21) Pilot Institution--Public junior colleges initially authorized to offer baccalaureate degrees through the pilot initiative established by SB 286 (78R - 2003). Specifically, the four pilot institutions are Midland College, South Texas College, Brazosport College, and Tyler Junior College.



(22) Planning Notification--Formal notification that an institution intends to develop a plan and submit a degree program proposal or otherwise notify the Board of intent to offer a new degree program.

(23) Professional Degree--Certain degree programs that prepare students for a career as a practitioner in a particular profession, including certain credential types that are required for professional licensure. For the purpose of this chapter, the term refers specifically to the following degrees: Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Podiatric Medicine (D.P.M.), Doctor of Veterinary Medicine (D.V.M.) and Juris Doctor (J.D.).

(24) Program Inventory--The official list of all degree and certificate programs offered by a public community college, university, or health-related institution, as maintained by Board Staff.

(25) Public Health-Related Institution--A medical or dental unit as defined by Tex. Educ. Code §61.003(5).

(26) Public Junior College--A public institution of higher education as defined in Tex. Educ. Code §61.003(2).

(27) Public Two-year College--Any public junior college, public community college, public technical institute, or public state college as defined in Tex. Educ. Code §61.003(16).

(28) Public University--A general academic teaching institution as defined by Tex. Educ. Code §61.003(3).

(29) Semester Credit Hour, or Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(30) Texas Classification of Instructional Programs (CIP) Coding System--The Texas adaptation of the federal Classification of Instructional Programs taxonomy developed by the National Center for Education Statistics and used nationally to classify instructional programs and report educational data. The 8-digit CIP codes define the authorized teaching field of the specified program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(31) Texas Core Curriculum--Curriculum required at each institution of higher education students are required to complete as required by 19 TAC §4.23(3).

(32) Texas Success Initiative (TSI--A comprehensive program of assessment, advising, developmental education, and other strategies to ensure college readiness. The TSI Assessment that shall be the sole assessment instrument as specified in 19 TAC §4.56. The passing standards for the authorized TSI Assessment are established in 19 TAC §4.57.

(33) Tracks of Study--Specialized areas of study within a single degree program.

(34) Transcriptable Minor--A transcriptable minor is a group of courses around a specific subject matter marked on the student's transcript. The student must declare a minor for the minor to be included on the student's transcript. The student cannot declare a minor without also being enrolled in a major course of study as part of a baccalaureate degree program.

(35) Workforce Education Course Guide Manual (WECM)--An online database composed of the Board's official statewide inventory of career technical/workforce education courses available for two-year public colleges to use in certificate and associate degree programs.

#### §2.4. Types of Approval Required.

The Board requires each institution to obtain one of the following types of approval for a certificate or degree program. No approval is required for new tracks of study in an existing degree program and tracks of study are not listed as separate degree programs in the Program Inventory.

(1) Notification Only--this approval is obtained when the institution of higher education successfully submits and receives confirmation of its submission to Board Staff.

(2) Assistant Commissioner Approval-a proposed program subject to Assistant Commissioner Approval may be approved by the Assistant Commissioner if the program is administratively complete as described in §2.6 of this subchapter and meets all the requirements established by rule as determined by the Assistant Commissioner.

(A) If the Assistant Commissioner recommends denial of a program or does not take action to approve the program within six months of Board Staff's determination that the program proposal is administratively complete, then the program approval will be subject to the process for Commissioner Approval.

(B) There are two types of Assistant Commissioner Approval depending on the type of action the institution requests.

(i) Regular Review--A proposed program subject to Assistant Commissioner Approval shall receive regular review unless the institution's request is eligible for Expedited Review.

(ii) Expedited Review--an institution submits for review and approval the information required by rule and obtains approval from Board Staff once staff confirms that the institution's request is administratively complete, and the Assistant Commissioner confirms that the institution's request qualifies for Expedited Review. This type of review is authorized only where expressly indicated in rules under this chapter.

(3) Commissioner Approval--The Assistant Commissioner designated to approve academic programs under this chapter will forward a program subject to Commissioner Approval to the Commissioner for review and approval. A proposed program subject to Commissioner Approval may be approved by the Commissioner if the program is administratively complete as described in §2.6 of this subchapter and meets all the requirements established by rule as determined by the Commissioner. This type of approval will include a Board Staff recommendation about whether the program meets all the requirements established by rule.

(A) If the Commissioner does not approve or deny the proposal within nine months of Board Staff's determination that the proposal is administratively complete, the proposal will move to Board Approval.

(B) At the Commissioner's sole discretion, the Commissioner may elect to require Board Approval of the proposed program. Board approval must occur not later than one year after the institution's application was administratively complete.

(4) Board Approval--A program that is subject to Board Approval as indicated in rules under this chapter will be considered at a Board meeting not later than the first anniversary of Board Staff's determination that the application for the proposed program is administratively complete. This type of approval will include a recommendation from the Commissioner about whether the program satisfies the requirements of statute and rule for approval.

(A) Board Staff shall review the required criteria for each proposed program and provide a recommendation to the Commissioner. Board Staff's recommendation shall include a summary and

analysis of whether the proposed program meets each of the required criteria for approval.

(B) The Commissioner shall review Board Staff's recommendation and make a determination about whether to recommend approval of the proposed program to the Board.

(i) Board Staff shall notify the institution of the Commissioner's decision about whether to recommend the program.

(ii) If the Commissioner recommends denial of the program, Board Staff shall notify the institution and provide ten business days in which the institution may request in writing final consideration from the Board.

(iii) If the institution requests final consideration from the Board, Board Staff shall place the proposed program on the Board agenda for consideration at the next Board meeting not later than one year later than the program is determined administratively complete.

(iv) If Board Staff does not receive a request for Board consideration within ten business days from the date the institution was notified of the Commissioner's recommendation for denial of the program, the application shall be considered withdrawn.

(C) The Board shall consider the proposal at a Board meeting not later than the first anniversary of Board Staff's determination that the application for the proposed program is administratively complete. The Board's decision to approve or deny the proposed program is final and may not be appealed. If the Board denies approval, an institution may resubmit a request for approval of the proposed program not sooner than one year from the date of the Board's decision. If the Board fails to approve or deny the program by the first anniversary after Board Staff deems the proposal administratively complete, the program is considered approved by operation of law.

#### §2.5. General Criteria for Program Approval.

(a) In addition to any criteria specified in statute or this chapter for a specific program approval, the Assistant Commissioner, Commissioner, or Board, as applicable, shall consider the following factors:

(1) Evidence that the program is needed by the state and the local community, as demonstrated by student demand for similar programs, labor market information, and value of the credential;

(2) Whether the program unnecessarily duplicates programs offered by other institutions of higher education or private or independent institutions of higher education;

(3) Comments provided to the Board from institutions noticed under §2.7 of this subchapter;

(4) Whether the program has adequate financing from legislative appropriation, funds allocated by the Board, or funds from other sources;

(5) Whether the program's cost is reasonable and provides a value to students and the state when considering the cost of tuition, source(s) of funding, availability of other similar programs, and the earnings of students or graduates of similar credential programs in the state to ensure the efficient and effective use of higher education resources;

(6) Whether the program has necessary faculty and other resources including support staff to ensure student success;

(7) Whether and how the program aligns with the metrics and objectives of the Board's Long-Range Master Plan for Higher Education;

(8) Whether the program meets academic standards specified by law or prescribed by Board rule, including rules adopted by the Board for purposes of this section, or workforce standards established by the Texas Workforce Investment Council; and

(9) Past compliance history and program quality of the same or similar programs, where applicable.

(b) In the event of conflict between this rule and a more specific rule regarding program approval, the more specific rule shall control.

#### §2.6. Administrative Completeness.

(a) An institution must submit a fully completed application for each proposed program for which approval is required that includes:

(1) each element or item of information required by this subchapter;

(2) each element or item of information required by the subchapter in this chapter governing the type of program approval required;

(3) the required Board form for the type of program approval required; and

(4) fully executed certifications.

(b) Board Staff shall determine whether an application is administratively complete and notify the institution not later than the sixth business day after receipt.

(c) If Board Staff determines that the application is incomplete or additional information or documentation is needed, the institution must respond with all of the requested information or documentation within ten business days or the request will be deemed incomplete and returned to the institution.

(d) An institution may resubmit an application that was returned as incomplete as soon as it has obtained the requested information or documentation. This submission will be considered a new application.

#### §2.7. Informal Notice and Comment on Proposed Local Programs.

(a) Not later than the sixtieth day after an institution submits an administratively complete application for approval, Board Staff shall provide informal notice and opportunity for comment to other institutions of higher education in the local community that offer substantially similar programs.

(b) Board Staff shall provide notification of the applicant institution's request for approval and allow not fewer than thirty days for a noticed institution to provide comments to Board Staff regarding:

(1) State or local need for the proposed program; or

(2) Evidence of whether the program unnecessarily duplicates programs offered by public, private, or independent institutions in the Higher Education Regions that offer substantially similar programs.

(c) When considering whether to approve a program requiring approval under this chapter, the Assistant Commissioner, Commissioner, or Board shall consider the comments that the noticed institutions provide to the Board under this section.

#### §2.8. Time Limit on Implementing Approved New Programs or Administrative Changes.

(a) Unless otherwise stipulated at the time of approval, if an approved new degree program is not established within two years of approval, that approval is no longer valid.

(b) Unless otherwise stipulated at the time of approval, if approved administrative changes are not implemented within two years of approval, that approval is no longer valid.

(c) Provisions of this section apply to all approvals and changes under this chapter.

§2.9. Revisions and Modifications to an Approved Program.

(a) Substantive revisions and modifications include, but are not limited to:

(1) Changing the location of the program; and

(2) Changing the funding from self-supported to formula-funded or vice versa.

(b) For a program that initially required Board Approval, any substantive revision or modification to that program will require Board Approval under §2.4 of this subchapter. For all other programs, any substantive revision or modification will require Assistant Commissioner Approval under §2.4(a)(2) of this subchapter.

(c) Non-substantive revisions and modifications program include, but are not limited to:

(1) Increasing the number of semester credit hours of a program for reasons other than a change in programmatic accreditation requirements;

(2) Consolidating a program with one or more existing programs;

(3) Changing the modality of the program;

(4) Altering any condition listed in the program approval notification;

(5) Changing the CIP Code of the program;

(6) Increasing the number of semester credit hours if the increase is due to a change in programmatic accreditation requirements;

(7) Reducing the number of semester credit hours, so long as the reduction does not reduce the number of required hours below the minimum requirements of the institutional accreditor, program accreditors, and licensing bodies, if applicable;

(8) Changing the Degree Title or Designation;

(9) Creation, consolidation, or closure of an administrative unit at a public university or a public health-related institution; and

(10) Other non-substantive revisions that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner.

(d) The non-substantive revisions and modifications in subsection (c)(1) - (5) of this section are subject to Assistant Commissioner Approval Regular Review under §2.4 of this subchapter. All other non-substantive revisions and modifications are subject to Assistant Commissioner Approval Expedited Review under §2.4(a)(2)(B) of this subchapter.

§2.10. Audit and Non-Compliance.

(a) Board Staff reserves the right to audit an institution's program at any time to ensure compliance with the provisions of this chapter.

(b) If Board Staff determines that any institution is in non-compliance with the terms of its approval; has otherwise failed to seek approval required by §2.9 for a revision or modification; or is in violation of statute or Board rule governing program operation or approval; Board Staff shall:

(1) Provide notice to the institution of alleged non-compliance related to the program at issue;

(2) Provide the institution not more than one year to remedy the violation by achieving compliance with the approval, statute, or rule, by means acceptable to the Commissioner;

(3) At the end of one-year, if the institution has not achieved compliance acceptable to the Commissioner, Board Staff shall request that the Board authorize issuance of a show cause letter to the institution requiring the institution to show cause why the Board shall not recommend closure of the program and teach out.

(c) Program Closure and Teach-Out. If Board Staff determines that a program is in non-compliance or fails to satisfy all contingencies and conditions of its approval after responding to the show cause notice in subsection (b) of this section, Board Staff may notify the institution of:

(1) the actions necessary for the institution to receive the required approvals or meet the conditions; or

(2) that Board Staff recommends closure of the program.

(d) If the institution where the program is located wishes to close the program, the institution shall follow the procedures in subchapter H of this chapter.

(e) If the institution chooses not to follow the recommendation, the Board may request that Board Staff send the recommendation for closure to the governing board of the institution.

§2.11. Effective Date of Rules.

Each rule under this subchapter applies to each program for which an institution has submitted a required Planning Notification on or after June 1, 2023. For a proposed program not required to submit a Planning Notification, these rules apply to a program submitted for notification or approval on or after September 1, 2023. For all other rules not related to program approval, these rules take effect on September 1, 2023.

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

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



**SUBCHAPTER B. APPROVAL PROCESS FOR A CERTIFICATE**

**19 TAC §§2.30 - 2.34**

The Texas Higher Education Coordinating Board (Board) proposes new rules in Title 19, Texas Administrative Code, Part 1, Chapter 2, Subchapter B, §§2.30 - 2.34, concerning the approval of new certificates. Specifically, this new subchapter will outline the Board's processes for approving new certificate programs, implementing Texas Education Code §61.0512.

Texas Education Code §61.0512(a) requires the Board to approve all new certificate programs before an institution of higher

education may offer the program. Certificates are generally divided into two broad categories: academic certificates, which may include courses similar or identical to coursework offered as part of a degree program; and workforce certificates, which prepare a student for direct entry into the workforce and may not have any connection to an existing degree program.

Currently, the Board does not collect information about all certificate programs institutions intend to implement or permit institutions to offer certain types of certificates depending on the institution's sector. For instance, rules limit public junior colleges from offering many types of academic certificates. Likewise, rules discourage public general academic institutions or health-related institutions from offering very many types of workforce certificates.

By broadening the program types encompassed in the definition of "certificate," this new subchapter allows the Board to more comprehensively capture the certificate programs institutions intend to offer. This rule moves toward the Board's goal of institution-neutral regulations - treating similar programs uniformly, even when those programs are offered by institutions in different sectors. This approach is also better aligned with definition of certificate in Education Code §61.003.

This rule aligns the Board with its statute and allows the Board to achieve several strategic objectives. This rule removes restrictions on public junior colleges offering certain types of academic certificates; provides the opportunity for all institutions to offer more types of certificates; and allows the Board to collect critical information about the variety and breadth of certificates offered across the state. This rule is a critical component of the Board's ability to contribute to finely tuned workforce planning.

The Board proposes new chapter 2, subchapter B, Approval Process for a Certificate rules as detailed below:

Rule 2.30, Authority, lays out the sections of the Texas Education Code that grant the Board authority to approve certificates.

Rule 2.31, Certificate Approval by Notification Only, states that institutions must notify the Board when offering a new certificate program. This rule excludes transcriptable minors, associate degrees, workforce education, and non-credit certificates.

Rule 2.32, Notification, lists the information required of institutions intending to submit a certificate program to the Board.

Rule 2.33, Approval, describes the conditions for approval, and states that approved certificates will be recorded as such in the institution's official Program Inventory.

Rule 2.34, Effective Date of Rules, states that the rules of this subchapter become effective for certificates submitted for approval on or after September 1, 2023.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be more institutions' expanded ability to offer more types of certificates, and also better reporting of existing certificate programs for greater transparency. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for thirty (30) days following publication of the proposal in the *Texas Register*.

The new subchapter is proposed under Texas Education Code §61.0512(a) which provides the Board with the authority to approve all new certificate programs before an institution of higher education may offer the program; and Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

The proposed new rules affect Texas Education Code §§61.0512 and chapter 130, governing programs offered by public junior colleges

#### §2.30. Authority.

The authority for this subchapter is Texas Education Code §61.0512, which states that institutions may offer new certificate programs with the Board's approval.

#### §2.31. Certificate Approval by Notification Only.

A public institution of higher education must provide notification to the Board to offer a new certificate program. Certificate is defined in subchapter A of this chapter, except as follows:

- (1) The term "certificate" does not include a transcriptable minor.
- (2) For the purpose of this subchapter, certificate excludes an associate degree.

(3) For the purpose of this subchapter, certificate excludes Career Technical/Workforce Programs intended to prepare students for immediate employment or a job upgrade in a specific occupation.

(4) For the purpose of this subchapter, certificate excludes non-credit certificates.

§2.32. Notification.

Not later than the ninetieth day after an institution initially offers a certificate program, each institution shall provide, in a manner prescribed by Board Staff, the following information:

- (1) The number of semester credit hours for the certificate;
- (2) The CIP Code for the certificate, if applicable;
- (3) The CIP Codes for all courses that comprise the certificate;
- (4) The name or designation of the certificate;
- (5) The type of certificate, if applicable;
- (6) Whether the certificate when earned in combination with any other certificate, defined set of courses, or other requirements leads to the award of another credential, including an associate degree or bachelor's degree; and
- (7) Other information required to facilitate inclusion of the certificate program in a state credential repository or student advising resources.

§2.33. Approval.

(a) A certificate is deemed approved when the institution successfully files the notification containing all information required by this subchapter, in accordance with the Notification Only process in subchapter A, §2.4(a)(1) of this chapter (relating to Types of Approval Required). If Board Staff determines that an institution fails to provide the information required by this section, Board Staff may reject the submission and pend approval until the information is complete.

(b) Board Staff will add the new certificate program to the institution's official Program Inventory. The Program Inventory contains the list of degrees and certificates approved by the Board under Tex. Educ. Code §61.0512.

§2.34. Effective Date.

These rules apply to a certificate subject to this subchapter submitted for approval on or after September 1, 2023.

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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



## SUBCHAPTER C. PRELIMINARY PLANNING PROCESS FOR NEW DEGREE PROGRAMS

### 19 TAC §§2.40 - 2.43

The Texas Higher Education Coordinating Board (Board) proposes new rules in Title 19, Texas Administrative Code, Part 1,

Chapter 2, Subchapter C, §§2.40 - 2.43, concerning the preliminary planning process for new degree programs. Specifically, this new subchapter will outline the Board's requirements for preliminary planning of new degree programs, implementing Texas Education Code §61.0512.

Texas Education Code §61.0512(b) requires institutions to notify the Board prior to beginning preliminary planning for a new degree program. An institution is planning for a new degree program if it takes any action that leads to the preparation of a proposal for a new degree program.

These rules align with statute and allow the Board to track and effectively plan for new degree program requests. These rules also require the Board Staff to provide labor market and other relevant information to institutions. This information will benefit institutions in developing the new degree program proposal.

Section 2.40, Authority, lists the section of the Texas Education Code that grants the Board authority to require preliminary Planning Notifications for new degree programs.

Section 2.41, Planning Notification: Notice of Intent to Plan, provides the information required for preliminary Planning Notifications. This rule also outlines Board requirements for providing labor market and other relevant information to institutions.

Section 2.42, Board Staff Response, describes the approval process for the Planning Notification and consequences for failing to provide the required information.

Section 2.43, Effective Date of Rules, states that this subchapter becomes effective for new Planning Notifications sent on or after June 1, 2023.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be improved communication between the Board and institutions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;

- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for thirty (30) days following publication of the proposal in the *Texas Register*.

These new sections are proposed under Texas Education Code §61.0512(b), which provides the Board with the authority to require notification when an institution begins preliminary planning for a new degree program.

The proposed new rules affect Texas Education Code §61.0512(b).

§2.40. Authority.

The authority for this subchapter is Texas Education Code §61.0512(b), which requires institutions to notify the Board prior to beginning preliminary planning for a new degree program.

§2.41. Planning Notification: Notice of Intent to Plan.

(a) Prior to the institution seeking approval for a new degree program from its governing board, each institution's Chief Academic Officer, or delegate, shall provide notification to Board Staff of the institution's intent to engage in planning for a new degree program. The Planning Notification shall contain the following information:

- (1) The title of the degree;
- (2) The degree designation;
- (3) CIP Code; and
- (4) Anticipated date of submission.

(b) Not later than sixty days after Board Staff receives the Planning Notification, Board Staff shall provide to that institution a report including available labor market information and other relevant data to inform the institution's planning for the proposed program, including data about the number of similar programs approved in an area likely to be served by the applicant institution.

§2.42. Board Staff Response.

The Planning Notification shall be deemed approved upon completed submission of the required information, as determined by Board Staff. If Board Staff determines that an institution fails to provide the information required by this section, Board Staff may reject the submission and pend approval until the information is complete.

§2.43. Effective Date of Rules.

This subchapter goes into effect on June 1, 2023. Institutions must submit a Planning Notification for new programs in accordance with this subchapter on or 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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Nichole Bunker-Henderson  
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Texas Higher Education Coordinating Board  
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## SUBCHAPTER E. APPROVAL PROCESS FOR NEW BACCALAUREATE PROGRAMS AT PUBLIC JUNIOR COLLEGES.

### 19 TAC §§2.80 - 2.92

The Texas Higher Education Coordinating Board (Board) proposes new rules in Title 19, Texas Administrative Code, Part 1, Chapter 2, Subchapter E, §§2.80-2.92, concerning the approval process for new baccalaureate programs at public junior colleges. Specifically, these new sections will outline the Board's requirements for public junior colleges, including pilot institutions, to request new baccalaureate programs.

In 2003, the legislature first gave permission to a small number of public junior colleges (the "pilot institutions") to begin offering baccalaureate degrees. The pilot institution grouping came to include Midland College, South Texas College, Brazosport College, and Tyler Junior College. In 2017, the legislature expanded permission to offer a baccalaureate degree to all public junior colleges in the state.

Statute treats pilot institutions and non-pilot institutions distinctly, giving them different authority to offer these programs and subjecting them to different approval processes. In addition, statute treats baccalaureate program requests from public junior colleges and from other institutions of higher education distinctly. Chapter 2, subchapter E therefore follows statute, separating out the baccalaureate approval process for public junior colleges in a separate subchapter and treating pilot and non-pilot institutions differently.

Except for pilot institutions for which Texas Education Code §130.303(a) mandates approval, the types of approval that the Board will require under new §2.85 for a public junior college that proposes to offer a baccalaureate program are aligned with the types of approval required of general academic institutions under this chapter. The Board proposes using the same definitions, general criteria, and approval type set out in chapter 2, subchapter A, to ensure alignment and clarity for all institutions seeking program approval required by law.

Section 2.87 sets out the criteria for a proposed baccalaureate program offered by a public junior college, other than a pilot institution. The rule requires that the institution meet the criteria set out in subchapter A, §2.5, consistent with other institutions of higher education. The rule additionally references the statutory criteria for approval as Tex. Educ. Code §130.308, which contains numerous express statutory criteria for approval. For the purpose of clarity and to ensure alignment between the rule and statute these statutory criteria are not restated in the rule.

Section 2.80, Purpose, establishes the purpose of the subchapter.

Section 2.81, Authority, lists the sections of the Texas Education Code providing the Board with the authority to promulgate rules related to baccalaureate degree programs, including §61.0512(h)(2) giving the Board power to approve programs

generally and Texas Education Code chapter 130, subchapter L, pertaining to baccalaureate degree programs at public junior colleges specifically.

Section 2.82, Applicability, limits applicability of the subchapter to public junior colleges.

Section 2.83, Definitions, cross-references this subchapter to the definitions section in subchapter A.

Section 2.84, Submission of Planning Notification, cross-references this subchapter to the procedures to submit a Planning Notification outlined in subchapter C.

Section 2.85, Approval Required, sets out the levels of approval for different degree types. For non-pilot institutions, the Board will subject the institution's first baccalaureate degree to Board Approval, proposed baccalaureate degrees with over 50% new content to Commissioner Approval, and proposed baccalaureate degrees with 50% or less new content to Assistant Commissioner Approval. For pilot institutions, the Board will subject baccalaureate degree proposals to Assistant Commissioner Approval.

Section 2.86, Presentation of Requests and Steps for Implementation, sets out the procedures public junior colleges must follow to submit a proposed baccalaureate degree program.

Section 2.87, Criteria for New Baccalaureate Degree Programs, contains the criteria Board Staff will use to evaluate baccalaureate degree program proposals submitted by public junior colleges.

Section 2.88, Approval and Semester Credit Hours, describes the process institutions must follow if the proposed baccalaureate degree program would exceed 120 hours.

Section 2.89, Post-Approval Program Reviews, requires institutions to submit post-approval reviews in line with statutory requirements.

Section 2.90, Revisions to Approved Baccalaureate Programs, cross-references this subchapter to the procedure to request a revision or modification listed in subchapter B.

Section 2.91, Phasing Out a Baccalaureate Program, cross-references this subchapter to the procedure to request a program be phased out in subchapter H.

Section 2.92, Effective Date of Rules, states that the rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules become effective for a proposal submitted on or after September 1, 2023.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the

first five years the sections are in effect, the public benefit anticipated as a result of administering the section will be improved communication between the Board and institutions. The rules provide additional clarity of the program approval process for institutions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for thirty (30) days following publication of the proposal in the *Texas Register*.

Texas Education Code §61.0512(h)(2) gives the Board authority to approve programs generally; and Texas Education Code chapter 130, subchapter L, grants the Board authority to administer approval processes for baccalaureate degree programs at public junior colleges specifically. The new sections are also proposed under Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

#### §2.80. Purpose.

The purpose of this subchapter is to establish the process for public junior colleges to request a new baccalaureate degree program from the Board.

#### §2.81. Authority.

The authority for this subchapter is Texas Education Code §§61.0512(h)(2), 130.302 and 130.312, which provides the Board with the authority to administer and approve certain baccalaureate degree programs at public junior colleges.

#### §2.82. Applicability.

This subchapter applies exclusively to public junior colleges defined under Tex. Educ. Code §61.003(2).

#### §2.83. Definitions.

This subchapter uses the definitions under subchapter A of this chapter (relating to General Provisions), except as otherwise specified.

#### §2.84. Submission of Planning Notification.

A public junior college, other than a pilot institution, must submit a Planning Notification to Board Staff in accordance with subchapter C, §2.41, of this chapter (relating to Preliminary Planning Process for New Degree Programs).

§2.85. Approval Required.

(a) A public junior college proposal for a new baccalaureate degree is subject to the following levels of approval:

(1) If the baccalaureate degree will be the institution's first degree at that level, the new degree proposal will be subject to Board Approval under subchapter A, §2.4, of this chapter (relating to Preliminary Planning Process for New Degree Programs).

(2) If the baccalaureate degree is not the institution's first degree at that level, the new degree proposal will be subject to the following levels of approval:

(A) If the proposed degree contains not greater than 50% new content, then the proposal will be subject to Assistant Commissioner approval under subchapter A, §2.4, of this chapter.

(B) If the proposed degree contains greater than 50% new content, then the proposal will be subject to Commissioner Approval under subchapter A, §2.4, of this chapter.

(b) Notwithstanding section (a), a pilot institution submitting a proposal for a new baccalaureate degree is subject to Assistant Commissioner Approval under subchapter A, §2.4, of this chapter.

§2.86. Presentation of Requests and Steps for Implementation.

(a) The requesting institution, other than a pilot institution, must submit a Planning Notification in accordance with subchapter C of this chapter (relating to Preliminary Planning Process for New Degree Programs).

(b) A public junior college must request a new baccalaureate degree program using the form prescribed for public junior colleges available on the Board's website.

(c) The rules for administrative completeness set out in subchapter A of this chapter (relating to General Provisions) apply to baccalaureate programs at public junior colleges. Each institution must submit all information and forms required by this subchapter and applicable provisions of subchapter A to be deemed administratively complete, including a nursing program meeting the requirements set out in Tex. Educ. Code §130.308 approval from the Board of Nursing.

(1) Upon receiving a form requesting a new baccalaureate degree program from the institution, or a pilot institution applying to offer an engineering program, the Assistant Commissioner, Commissioner or Board, depending on the required level of approval, shall act on the approval or denial according to the timelines specified in subchapter A of this chapter. If the Board does not act to approve or deny the proposal within the specified time frames, the program is considered approved.

(2) For a pilot institution, the Assistant Commissioner has sixty days from submission of the proposal request materials to complete the review and act to approve or disapprove the proposed program. The Assistant Commissioner shall approve the program if the baccalaureate degree program is administratively complete, approved by the governing board of the junior college district, and is not an engineering program.

(3) A public junior college applying to offer a Bachelor of Science in nursing must provide a letter from the Board of Nursing demonstrating that the program meets the standards and criteria of the Texas Board of Nursing in accordance with Tex. Educ. Code §130.308 with its application in order to be deemed administratively complete.

(d) An institution must obtain the type of approval specified in §2.85 of this subchapter (relating to Approval Required).

(e) Upon approval, Board Staff will add the new degree program to the institution's official Program Inventory. The Program Inventory contains the list of degrees and certificates with official Board approval.

§2.87. Criteria for New Baccalaureate Degree Programs.

(a) The Board may authorize baccalaureate degree programs at a public junior college in the fields of applied science, including a degree program in applied science with an emphasis on early childhood education, applied technology, or nursing, that have a demonstrated workforce need.

(b) All proposed baccalaureate degree programs must meet the criteria set out in this subsection, in addition to the general criteria in subchapter A, §2.5 (relating to General Criteria for Program Approval), and subchapter F, §2.118 (relating to Post-Approval Program Reviews), of this chapter.

(c) Each public junior college seeking to offer a baccalaureate degree program must comply with the requirements and limitations specified in Tex. Educ. Code, chapter 130, subchapter L.

§2.88. Approval and Semester Credit Hours.

If the minimum number of semester credit hours required to complete a proposed baccalaureate program exceeds 120, the institution must provide detailed documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 120-semester credit hour limit. Board Staff will review the documentation provided and decide to approve or deny a request to exceed the 120-semester credit hour limit.

§2.89. Post-Approval Program Reviews.

Each public junior college offering a baccalaureate degree program shall conduct a review of each baccalaureate degree program offered and prepare a biennial report on the operation, quality, and effectiveness of the baccalaureate degree programs in a format specified by the Board. A copy of the report shall be delivered to the Board by January 1 of each odd numbered year.

§2.90. Revisions to Approved Baccalaureate Programs.

Institutions may request non-substantive revisions to approved baccalaureate degree programs under subchapter A, §2.9 of this chapter (relating to Revisions and Modifications to an Approved Program).

§2.91. Phasing Out a Baccalaureate Program.

An institution may request to phase out a baccalaureate program in accordance with subchapter H of this chapter using the Program Consolidation or Phase-Out Form on the Board's website.

§2.92. Effective Date of Rules.

Each rule under this subchapter applies to each program for which an institution has submitted a required Planning Notification on or after June 1, 2023. For a proposed program not required to submit a Planning Notification, these rules apply to a program submitted for notification or approval on or after September 1, 2023.

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

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## SUBCHAPTER F. APPROVAL PROCESS FOR NEW BACCALAUREATE AND MASTER'S DEGREES AT PUBLIC UNIVERSITIES AND PUBLIC HEALTH-RELATED INSTITUTIONS.

### 19 TAC §§2.110 - 2.121

The Texas Higher Education Coordinating Board (Board) proposes new rules in Title 19, Texas Administrative Code, Part 1, Chapter 2, Subchapter F, §§2.110 - 2.121, concerning the approval of new baccalaureate and master's degree programs at public universities and health-related institutions. Specifically, this new subchapter will outline the requirements for public universities and health-related institutions to submit requests for new baccalaureate and master's degrees, in fulfillment of Texas Education Code §61.0512.

Texas Education Code §61.051 tasks the Board with coordinating the efficient and effective use of higher education resources and avoiding unnecessary duplication. Texas Education Code §61.0512 states that a public institution of higher education may not offer any new degree program without Board approval. Texas Education Code §61.0515 requires that the number of semester credit hours required for the baccalaureate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

Section 2.110, Purpose, sets out the purpose of the subchapter, to establish a process for public universities and health-related institutions to request approval of a new baccalaureate or master's degree.

Section 2.111, Authority, lists the sections of the Texas Education Code that grant the Board authority to approve new degree programs.

Section 2.112, Applicability, limits applicability of the subchapter to public universities and public health-related institutions. This chapter does not apply to public junior colleges, as Subchapter E sets out the approval process for those institutions to seek approval for a baccalaureate degree; nor does this subchapter apply to the master's degree embedded credential.

Section 2.113, Submission of Planning Notification, provides the information required for institutions to submit preliminary Planning Notifications to the Board, giving early notice that they intend to submit a proposal for a new baccalaureate or master's degree. This provision aligns the rule to Tex. Educ. Code §61.0512(b), which requires each institution to notify the Board before the institution carries out preliminary planning of a proposed new degree program.

Section 2.114, Approval Required, outlines the various approval endpoints for different types of degrees. Programs with 50% or less new content receive Assistant Commissioner Approval. Programs with over 50% new content receive Commissioner Approval. Institutions seeking approval for a program that will be

the institution's first program offered at that level must receive Board Approval. The Board believes this approval process reserves the greatest level of review for those programs that offer the greatest amount of new content and thus require additional information and consideration. Proposed programs that contain less new content are subject to a lower-level approval and faster process. This process also provides greater alignment with an institution's accrediting body and works to streamline the process for institutions to the extent practical while allowing the Board to exercise more authority over the addition of new content at institutions.

Section 2.115, Presentation of Requests and Steps for Implementation, sets out the steps an institution must follow in order to request a new baccalaureate or master's degree, as well as the approval procedures Board Staff must follow for these programs. This process is consistent throughout new Chapter 2, creating a transparent and predictable process so institutions know what is required at each stage.

Section 2.116, Approval and Semester Credit Hours, requires institutions to provide a compelling academic reason for proposed baccalaureate degree programs exceeding a minimum of 120 semester credit hours. This section implements Texas Education Code §61.0515, which requires that baccalaureate degrees not exceed the institutional accreditor's minimum number of hours, in the absence of a compelling academic reason provided by the institution.

Section 2.117, Criteria for New Baccalaureate and Master's Degrees, lists the standards proposed baccalaureate and master's programs must meet for approval. In addition to fulfilling the standard new program criteria contained in Subchapter A, this rule contains criteria specific to the baccalaureate and master's degree program type. Texas Education Code §61.0512(c) lists minimum criteria the Board must use to evaluate a proposed program, including program need, adequate financing, necessary faculty and other resources, and academic standards. Section 2.117 develops those criteria in greater detail, tailoring them for baccalaureate and master's degree programs. This rule references back to the general criteria in §2.5 that apply to all new degree programs. New §2.117 incorporates the statutory minimum and additional criteria in one place so that each institution will know what criteria the institution must meet to obtain program approval. These new criteria, by reference back to §2.5, will ensure that new degree programs are better aligned with the Board's revised Long Range Master Plan for Higher Education. The plan in effect at this time of this proposal, *Building a Talent Strong Texas*, focuses on providing credential of value to students and limiting student debt to what is manageable based on the degree.

Section 2.118, Post-Approval Program Reviews, states that Board Staff will conduct post-implementation reviews in accordance with Subchapter I. This process is significantly similar to the current post-implementation review process.

Section 2.119, Revisions to Approved Baccalaureate or Master's Programs, states that an institution may request a revision or modification in line with Subchapter A, §2.7. The new rules are much more specific, clear, and predictable about what types of revisions require approval and what type of approval. This process is both streamlined, but also more robust, in that it ensures significant revisions receive appropriate review.

Section 2.120, Phasing Out a Baccalaureate or Master's Program, states that an institution wishing to phase out a program

approved under this chapter may follow the process set forth in Subchapter H. This process is substantially similar to the current process.

Section 2.121, Effective Date of Rules, states that the rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules become effective if the proposal would be submitted on or after September 1, 2023.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be a rigorous and uniform process for administering program approval for proposed baccalaureate and master's degrees. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for thirty (30) days following publication of the proposal in the *Texas Register*.

The proposed new sections are proposed under Texas Education Code §§61.051 and 61.0512, which provides the Board with the authority to approve all new degree programs before an institution of higher education may offer the program and Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of

all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

The proposed new rules affect Texas Education Code §61.0515.

#### §2.110. Purpose.

The purpose of this subchapter is to establish the process for public universities and public health-related institutions to request new baccalaureate or master's degrees from the Board.

#### §2.111. Authority.

The authority for this subchapter is Texas Education Code §§61.051 and 61.0512, which provide that no new degree program may be added at any public institution of higher education except with specific prior approval of the Board. Tex. Educ. Code §61.0515 requires that the number of semester credit hours required for the baccalaureate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

#### §2.112. Applicability.

(a) This subchapter applies to public universities and public health-related institutions.

(b) This subchapter does not apply to public junior colleges.

(c) This subchapter does not apply to a master's degree awarded by a public institution pursuant to Subchapter H, §2.147, of this chapter.

#### §2.113. Submission of Planning Notification.

An institution of higher education seeking approval to offer a degree program under this subchapter must submit a Planning Notification to Board Staff in accordance with Subchapter C of this chapter prior to submitting an administratively complete request for a new baccalaureate or master's degree proposal.

#### §2.114. Approval Required.

(a) A Public Health-Related Institution and Public University is subject to Assistant Commissioner Approval under Subchapter A, §2.4, of this chapter, if the proposed program contains not greater than 50% new content.

(b) A Public Health-Related Institution and Public University is subject to Commissioner Approval under Subchapter A, §2.4, of this chapter, if the proposed program contains greater than 50% new content.

(c) A Public Health-Related Institution or Public University proposing a master's degree that will be the institution's first degree at that level will be subject to Board Approval under Subchapter A, §2.4, of this chapter.

#### §2.115. Presentation of Requests and Steps for Implementation.

(a) A requesting institution must submit a Planning Notification in accordance with Subchapter C of this chapter.

(b) A Public Health-Related Institution and Public University must request a new baccalaureate or master's degree using the forms available on the Board's website.

(c) Board Staff will make the determination of administrative completeness in accordance with Subchapter A, §2.6, of this chapter.

(d) The Assistant Commissioner, Commissioner, or Board, as applicable, shall approve or deny the proposed program within the timelines specified in Subchapter A, §2.4, of this chapter, after receipt of the complete program proposal. If the Assistant Commissioner,

Commissioner, or Board does not act to approve or deny the proposal within the specified time frames, the program is considered approved.

(e) Upon approval, Board Staff will add the new degree program to the institution's official Program Inventory. The Program Inventory contains the list of degrees and certificates with official Board approval.

§2.116. Approval and Semester Credit Hours.

If the minimum number of semester credit hours required to complete a proposed baccalaureate program exceeds 120, the institution must provide detailed documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 120-semester credit hour limit. Board Staff will review the documentation provided and make a determination to approve or deny a request to exceed the 120-semester credit hour limit.

§2.117. Criteria for New Baccalaureate and Master's Degrees.

(a) All proposed baccalaureate and master's degree programs must meet the criteria set out in this subsection, in addition to the general criteria in Subchapter A, §2.5, of this chapter.

(b) Board Staff shall ensure that each institution certifies and provides required evidence that a proposed baccalaureate or master's degree meets the criteria in Subchapter A, §2.5, of this chapter and the following criteria in its proposal request:

(1) Program Need. To meet the requirements of Subchapter A, §2.5(a)(1) and (2), the institution must be able to demonstrate present and future workforce need of the state and nation. There should be a ready job market for graduates of the program, or alternatively, the program should produce students for master's or doctoral-level programs in fields in which there is a demonstrated need for professionals.

(2) Adequate Financing. In assessing whether the program meets the requirements of Subchapter A, §2.5(a)(4) and (5), the program must demonstrate that there is adequate financing available to initiate the proposed program without reducing funds for existing programs or weakening them in any way. The program must provide evidence demonstrating generation of sufficient semester credit hours under funding formulas and student tuition and fees to pay faculty salaries, departmental operating costs, and instructional administration costs for the program after the start-up period.

(3) Faculty and Resources.

(A) Faculty. In assessing the criteria under Subchapter A, §2.5(a)(6), Board Staff shall ensure that the faculty are adequate to provide high program quality. In reviewing faculty, Board Staff will review for the following minimum criteria:

(i) With few exceptions, the master's degree should be the minimum educational attainment for faculty teaching in baccalaureate programs.

(ii) In most disciplines, the doctorate should be the minimum educational attainment for faculty teaching in graduate programs.

(iii) Faculty shall meet the qualitative and quantitative criteria of the institution's appropriate accrediting body.

(iv) The institution must dedicate a sufficient number of qualified faculty to a new program. This number shall vary depending on the discipline, the nature of the program, and the anticipated number of students; however, there must be at least one full time equivalent faculty already in place for the program to begin enrolling students.

(v) In evaluating faculty resources for proposed degree programs, Board Staff shall consider only those degrees held by faculty that were issued by:

(I) United States institutions accredited by accrediting agencies recognized by the Board, or

(II) institutions located outside the United States that have demonstrated that their degrees are equivalent to degrees issued from an institution in the United States accredited by accrediting agencies recognized by the Board.

(B) Facilities and Other Resources. To meet the criteria in Subchapter A, §2.5(a)(6), each program must include adequate facilities and resources to accommodate the program, including:

(i) Office space for the faculty, teaching assistants, and administrative and technical support staff; seminar rooms; computer and electronic resources; and other appropriate facilities such as laboratories; and

(ii) Library and IT Resources. Library and information technology resources must be adequate for the proposed program and meet the standards of the appropriate accrediting agencies. Library resources should be strong in the proposed doctoral program field and in related and supporting fields.

(4) Quality of the Program and Alignment with the Long-Range Plan. To assess the quality of the program, the program must be able to demonstrate the quality of the program, including quality of curriculum design. In addition to meeting the criteria in Subchapter A, §2.5(a)(6) and (a)(8), the proposed program must offer high-quality curriculum, as evidenced by the following:

(A) Professional programs and those resulting in licensure are designed to meet the standards of appropriate regulatory bodies;

(B) The curricular structure and policies of the proposed program should promote students' timely completion of the program, including policies awarding:

(i) transfer of credit, as required by Chapter 4, Subchapter B of this title (relating to Transfer of Credit, Core Curriculum and Field of Study Curricula);

(ii) course credit by examination, credit for professional experience, placing out of courses, and any alternative learning strategies, such as competency-based education, which may increase efficiency in student progress in the proposed program; and

(iii) Strong Related Programs. There must be high-quality programs in other related and supporting disciplines at the baccalaureate or master's levels, as evidenced by enrollments, numbers of graduates, and completion rates in those related and supporting programs, as appropriate.

§2.118. Post-Approval Program Reviews.

Board Staff shall conduct post-approval reviews in accordance with Subchapter I of this chapter.

§2.119. Revisions to Approved Baccalaureate or Master's Degree Programs.

An institution may request a non-substantive or substantive revision or modification to an approved baccalaureate or master's program under Subchapter A, §2.7, of this chapter.

§2.120. Phasing Out a Master's or Baccalaureate Degree Program.

An institution may request to phase out a master's or baccalaureate program under Subchapter H of this chapter.

§2.121. Effective Date of Rules.

Each rule under this subchapter applies to each program for which an institution has submitted a required Planning Notification on or after June 1, 2023. For a proposed program not required to submit a Planning Notification, these rules apply to a program submitted for notification or approval on or after September 1, 2023.

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 July 11, 2022.

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Texas Higher Education Coordinating Board

Earliest possible date of adoption: August 21, 2022

For further information, please call: (512) 427-6182



## SUBCHAPTER G. APPROVAL PROCESS FOR NEW DOCTORAL AND PROFESSIONAL DEGREE PROGRAMS

### 19 TAC §§2.140 - 2.153

The Texas Higher Education Coordinating Board (Board) proposes new rules in Title 19, Texas Administrative Code, Part 1, Chapter 2, Subchapter G, §§2.140 - 2.153, concerning the approval of new doctoral and professional degree programs. Specifically, these new sections will outline the requirements for institutions to submit requests for new doctoral and professional programs, in fulfillment of Texas Education Code §61.0512.

Texas Education Code §61.051 tasks the Board with coordinating the efficient and effective use of higher education resources and avoiding unnecessary duplication. Texas Education Code §61.0512 states that a public institution of higher education may not offer any new degree program, including doctoral and professional degrees, without Board approval. Texas Education Code §61.05122 requires institutions to submit a plan for graduate medical education ahead of submitting an M.D. or D.O. proposal.

The rationale for this subchapter is to set up a uniform, fair process for institutions to submit requests for new doctoral and professional degree programs. Each rule sets out the steps which institutions must take, and standards proposed programs must meet in a methodical, chronological fashion. This subchapter also establishes, for the first time, rules carrying out several statutory provisions, including Texas Education Code §61.05122 requiring an institution requesting a new medical program to submit a plan to provide sufficient Graduate Medical Education.

Rule 2.140, Purpose, sets out the purpose of the subchapter to establish a process for public universities and health-related institutions to request approval of a new doctoral or professional degree.

Rule 2.141, Authority, lists the sections of the Texas Education Code that grant the Board authority to approve new degree programs.

Rule 2.142, Applicability, limits the applicability of the chapter to public universities and public health-related institutions.

Rule 2.143, Submission of Planning Notification, provides the information required for institutions to submit preliminary Planning Notifications to the Board, giving early notice that they intend to submit a proposal for a new doctoral or professional degree.

Rule 2.144, Graduate Medical Education Plan for New Medical Degree Programs, outlines steps institutions must take to come into compliance with Texas Education Code §61.05122, which requires institutions requesting a new M.D. or D.O. program to submit a plan to support sufficient Graduate Medical Education slots for graduates as well.

Rule 2.145, Presentation of Requests and Steps for Implementation, sets out the steps an institution must follow in order to request a new doctoral or professional degree, as well as the approval procedures Board Staff must follow for these programs. This process is aligned with each subchapter in this chapter.

Rule 2.146, Criteria for New Doctoral and Professional Degree Programs, lists the standards that proposed doctoral and professional programs must meet for approval. In addition to fulfilling the standard new program criteria contained in subchapter A, this rule contains criteria specific to the doctoral or professional degree program type. Texas Education Code §61.0512(c) lists criteria the Board must use to evaluate a proposed program, including program need, adequate financing, necessary faculty and other resources, and academic standards. Rule 2.146 develops those criteria in greater detail, tailoring them for doctoral and professional programs (for example, by requiring faculty for the proposed program to have experience in supervising doctoral dissertations). This rule references back to the general criteria in Rule 2.5 that apply to all new degree programs. New Rule 2.146 incorporates the statutory minimum and additional criteria in one place so that each institution will know what criteria the institution must meet to obtain program approval. These new criteria, by reference back to Rule 2.5, will ensure that new degree programs are better aligned with the Board's revised Long Range Master Plan for Higher Education. The plan in effect at this time of this proposal, *Building a Talent Strong Texas*, focuses on providing credential of value to students and limiting student debt to what is manageable based on the credential.

Rule 2.147, Embedded Master's Degree, allows institutions receiving approval for a doctoral degree to also offer a master's degree embedded within the larger doctoral program, giving doctoral students who do not complete their program the possibility of still earning a degree. This was permissible in practice in many circumstances, but inclusion in the rule makes the process clear as to what approval an institution must obtain to offer an embedded degree. This policy benefits students by providing a credential for those who do not complete a doctoral program and provides clarity and direction to institutions about how to offer this type of degree.

Rule 2.148, Approval and Semester Credit Hours, relates to formula implications stemming from the number of semester credit hours in a doctoral program. Texas Education Code §61.059(l) states that, to receive formula funding, doctoral programs over 100 semester credit hours must provide the Board with evidence of a compelling academic reason why the program needs to be over 100 hours. Under the same provision, doctoral programs over 130 semester credit hours may not receive formula funding. Rule 2.148 states that the institution may submit this compelling academic reason to the Board as part of the initial approval request for proposed doctoral programs over 100 semester credit hours. This will streamline the process for institutions and create a clear process for reporting these hours.

Rule 2.149, Non-Compliance with Approval Conditions, describes what happens if a new doctoral or professional program does not fulfill all conditions of its approval. Board Staff will notify the institution in writing of its failure to meet the conditions of approval. If the institution does not respond to or remedy the deficiencies, Board Staff may recommend that the Board issue a show cause letter to the institution. The institution will have a one-year period to respond to the show-cause letter. If the institution does not respond or remedy the contingencies and conditions of approval, Board Staff may recommend to the institution to phase out the program; if the institution does not respond, Board Staff may send the recommendation to the institution's governing board. If the institution or its governing board take no further action the institution must identify the program recommended for closure in its Legislative Appropriations Request. This process provides clarity to the Board Staff and to institutions about expectations, process, and consequences for non-compliance while remaining aligned with the Board's authority and role set out in statute. This new rule language closely parallels existing processes in current rules.

Rule 2.150, Post-Approval Program Reviews, states that Board Staff will conduct post-implementation reviews in accordance with subchapter I. This process is substantially similar to the current process.

Rule 2.151, Revisions to Approved Doctoral or Professional Programs, states that an institution may request a revision or modification in line with subchapter A, §2.7. The new rules are much more specific, clear, and predictable about what types of revisions require approval and what type of approval. This process is both streamlined, but also more robust, in that it ensures significant revisions receive appropriate review.

Rule 2.152, Phasing Out a Doctoral or Professional Program, states that an institution wishing to phase out a doctoral or professional program may follow the process set forth in subchapter H. This process is substantially similar to the current process.

Rule 2.153, Effective Date of Rules, states that the rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules become effective if the proposal is submitted on or after September 1, 2023.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be a rigorous and uniform process for administering program approval for proposed doctoral and professional degrees, more closely tied to statute. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for thirty (30) days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code §61.051, which provides the Board with the authority to coordinate the efficient and effective use of higher education resources and avoid unnecessary duplication; Texas Education Code §61.0512, which states that a public institution of higher education may not offer any new degree program, including doctoral and professional degrees, without Board approval; Texas Education Code §61.05122, which requires institutions to submit a plan to the Board for graduate medical education ahead of submitting an M.D. or D.O. proposal; and Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

The proposed new rules affect Texas Education Code §§61.051, 61.0512, 61.05122, and 61.059(l).

#### §2.140. Purpose.

The purpose of this subchapter is to establish the process for public universities and public health-related institutions to request new doctoral or professional degrees from the Board.

#### §2.141. Authority.

The authority for this subchapter is Texas Education Code §§61.051 and 61.0512, which provide that no new degree program may be added at any public institution of higher education except with specific prior approval of the Board. In addition, Tex. Educ. Code §61.05122 requires institutions to submit a plan for graduate medical education ahead of submitting an M.D. or D.O. proposal.

#### §2.142. Applicability.

This subchapter applies to public universities and public health-related institutions as defined under subchapter A of this chapter.

#### §2.143. Submission of Planning Notification.

An institution of higher education must submit a Planning Notification to Board Staff in accordance with subchapter C, §2.41 of this chapter

(relating to Planning Notification: Notice of Intent to Plan), at least one year prior to submitting an administratively complete request for a new doctoral or professional degree.

§2.144. Graduate Medical Education Plan for New Medical Degree Programs.

(a) In addition to submitting a Planning Notification under subchapter C, §2.41, of this chapter, an institution of higher education seeking approval to offer a doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) professional degree must also submit a graduate medical education plan, in accordance with Tex. Educ. Code §61.05122. Submission of this plan is a prerequisite to Board consideration of the proposed degree program.

(b) Board Staff may approve the graduate medical education plan if the institution's plan meets all the requirements of Tex. Educ. Code §61.05122. Board Staff may request additional information as necessary to determine if the requirements of Tex. Educ. Code §61.05122 are met.

(c) An institution that experiences substantial growth in an individual enrollment class size after Board Staff approves the graduate medical education plan must submit an updated plan that meets the requirements of Tex. Educ. Code §61.05122(d-1) not later than one academic term after experiencing substantial growth.

(1) For the purpose of this section, "substantial growth" is defined as an increase in enrollment that would require additional first-year residency positions to achieve a ratio for the number of first-year graduate medical education positions, relative to the number of medical school graduates in the state, of at least 1.1 to 1.

(2) The Assistant Commissioner shall approve the updated graduate medical education plan if the institution's plan meets all the requirements of Tex. Educ. Code §61.05122. Board Staff may request additional information as necessary to determine if the requirements of Tex. Educ. Code §61.05122 are met.

§2.145. Presentation of Requests and Steps for Implementation.

(a) The requesting institution must submit a Planning Notification in accordance with subchapter C, §2.41 of this chapter (relating to Planning Notification: Notice of Intent to Plan), at least one year prior to submitting an administratively complete program proposal.

(b) Each institution must request new doctoral and professional degree programs using the New Doctoral and Professional Degree Proposal Form available on the Board's website.

(c) Board Staff will make the determination of administrative completeness in accordance with subchapter A, §2.6, of this chapter (relating to Administrative Completeness).

(d) Board Staff shall utilize out-of-state disciplinary experts to assist in the review process to evaluate the quality of a proposed doctoral or professional program. The institution submitting the proposal is responsible for paying the costs of the external review.

(e) Each proposed doctoral and professional degree program is subject to Board Approval under subchapter A, §2.4(4) of this chapter (relating to Types of Approval Required).

(f) Upon Board approval, Board Staff will add the new doctoral or professional program to the institution's official Program Inventory. The Program Inventory contains the list of programs with official Board approval.

§2.146. Criteria for New Doctoral and Professional Degree Programs.

(a) All proposed doctoral and professional degree programs must meet the criteria set out in this subsection, in addition to the gen-

eral criteria in subchapter A, §2.5, of this chapter (relating to General Criteria for Program Approval).

(b) Each institution must provide evidence in its application that a proposed doctoral and professional program meets the following criteria.

(1) Program Need. To meet the requirements of subchapter A, §2.5(a)(1) and (2) of this chapter, the institution must be able to demonstrate present and future workforce need of the state and nation. There should be a ready job market for graduates of the program. In assessing the need for the program, the institution should consider labor market information and other data provided by Board Staff in response to the institution's Planning Notification. While Board Staff may also recommend or use generally available information to assess the need for the program, particularly in cases where labor market needs are changing rapidly, it is the responsibility of the institution requesting a doctoral or professional program to demonstrate that a workforce need for the proposed program exists. Acceptable documentation includes:

(A) An analysis of national data showing the number of doctoral or professional degrees being produced annually in the discipline and comparing that to the numbers of professional job openings for those degrees in the discipline as indicated by sources such as the main professional journal(s) of the discipline.

(B) The institution must also provide data on the enrollments, number of graduates, and capacity to accept additional students of other similar doctoral programs in Texas, demonstrating that current production levels of graduates are insufficient to meet projected workforce needs. The Board may consider local, state, or national workforce needs in this analysis.

(C) The institution should also provide evidence of student demand for a doctoral program in the discipline, such as potential student survey results and documentation that qualified students are not gaining admission to existing programs in Texas.

(2) Adequate Financing. In assessing whether the program meets the requirements of subchapter A, §2.5(a)(4) and (5) of this chapter, the program must demonstrate that there is adequate financing available to initiate the proposed program without reducing funds for existing programs or weakening them in any way. For doctoral programs, institutions shall offer comprehensive financial assistance packages to recruit and retain high-quality doctoral students.

(3) Faculty and Resources. In assessing the criteria under subchapter A, §2.5(a)(7) of this chapter, Board Staff shall ensure that each institution demonstrates a strong core of qualified doctoral faculty capable of guaranteeing a high-quality doctoral program with the potential to attain national prominence. The institution must employ at least one core faculty member active in the department offering the proposed program at the time of application. The institution must also provide an approved hiring schedule demonstrating the ability to hire any additional faculty appropriate to support the projected number of enrolled students. The institution must provide documentation on a schedule determined by Board Staff of the faculty hires through submission of a letter of intent, curriculum vitae or equivalent documentation of faculty credentials in a format determined by the Board, and a list of courses in the curriculum that the faculty hire would be qualified to teach. The program must not result in such a high ratio of doctoral students to faculty as to make individual guidance prohibitive. Evidence of quality faculty may include:

(A) Doctoral faculty, holding the Doctor of Philosophy degree or its equivalent from a variety of graduate schools of recognized reputation.

(B) Professors and associate professors have achieved national or regional professional recognition.

(C) Core faculty are currently engaged in productive research and have published the results of such research in the main professional journals of their discipline.

(D) Faculty come from a variety of academic backgrounds and have complementary areas of specialization within their field.

(E) Some doctoral faculty have experience directing doctoral dissertations.

(F) In evaluating faculty resources for proposed degree programs, the Board shall consider only those degrees held by the faculty that were issued by:

(i) United States institutions accredited by accrediting agencies recognized by the Board; or

(ii) institutions located outside the United States that have demonstrated that their degrees are equivalent to degrees issued from an institution in the United States accredited by accrediting agencies recognized by the Board.

(4) Support Staff. Each program must have an adequate number of support staff to provide sufficient services for both existing programs and any proposed increases in students and faculty in the proposed program.

(5) Facilities and Resources. To meet the criteria in subchapter A, §2.5(a)(7) of this chapter, each program must include adequate facilities and resources to accommodate the program, including:

(A) Office space for the faculty, teaching assistants, and administrative and technical support staff; seminar rooms; computer and electronic resources; and other appropriate facilities such as laboratories.

(B) Library and IT Resources. Library and information technology resources must be adequate for the proposed program and meet the standards of the appropriate accrediting agencies. Library resources should be strong in the proposed doctoral program field and in related and supporting fields.

(6) Quality of the Program and Alignment with the Long-Range Plan. In addition to meeting the criteria in subchapter A, §2.5(a)(6) and (8) of this chapter, an institution must demonstrate the quality of a proposed program by the meeting the following:

(A) An institution shall be required to utilize disciplinary experts to review the proposed program to assess the overall quality of the program. Elements of a high-quality program, may include, but are not limited to:

(i) Design of proposed program as evidenced by the program's ability to prepare a graduate student for teaching, creative activities, research, or other professional activities. The program must be characterized by freedom of inquiry and expression.

(ii) Availability of quality undergraduate and graduate programs in a wide number of disciplines at the undergraduate and master's levels. The institution must also offer high-quality programs in other related and supporting doctoral areas.

(iii) Quality Planning. The proposed program shall be carefully planned and result in a degree plan that is clear, comprehensive, and generally uniform. The program may include flexibility to meet the legitimate professional interests of doctoral-level degree or professional degree students. Evidence of a carefully planned, high-quality program includes:

(I) A logical sequence of degree requirements;

(II) Alternative methods of determining mastery of program content, such as competency-based education, prior learning assessment, and other options for reducing students' time to degree;

(III) Specialization and breadth of education, with rules for the distribution of study to achieve both, including interdisciplinary programs if indicated; and

(IV) A research dissertation or equivalent requirements to be judged by the doctoral faculty on the basis of quality.

(iv) External Learning Experiences. The program must include external learning experiences for students, such as internships, clerkships, or clinical experiences, in disciplines that require them.

(v) Accreditation Standards. Each proposed program shall meet the criteria of its accrediting Board and doctoral or professional program criteria of relevant professional groups and organizations, such as the Council of Graduate Schools, the Modern Language Association, the American Historical Association, the Accreditation Board for Engineering and Technology, or other bodies relevant to the particular discipline.

(vi) Teaching Loads of Faculty. Unless justification is provided in the application, teaching loads of faculty in the doctoral or professional program should not exceed two courses per term. The mix of courses shall include advanced courses and seminars with low enrollments.

§2.147. *Embedded Credential: Master's Degree.*

An institution may offer a master's degree as an embedded credential in the same, a related, or supporting field to a student who enrolled in a doctoral program. The institution may request approval for the master's degree:

(1) in the application for the doctoral program; or

(2) may request the master's degree program subject to Expedited Review under subchapter A, §2.4, of this chapter, if the institution already offers an approved doctoral program in the same CIP Code.

§2.148. *Approval and Semester Credit Hours.*

(a) The Board shall review and approve or deny a proposed doctoral or professional degree in accordance with the applicable provisions under subchapter A and this subchapter.

(b) If the Board approves a program that requires more than 100 semester credit hours, that program is deemed to meet the requirements for formula funding of doctoral students over 100 credit hours, but not to exceed 130 semester credit hours, set out in Tex. Educ. Code §61.059.

§2.149. *Non-Compliance with Approval Conditions.*

(a) If a new doctoral or professional degree program fails to satisfy all conditions of approval by the end of the first five years following program implementation, Board Staff shall notify the institution in writing of its deficiencies. Within sixty days of receipt of notification, the program shall:

(1) provide to Board Staff a written report containing the institution's findings as to why all conditions of approval were not met;

(2) submit a written plan describing how the program will fulfill all unsatisfied conditions of approval within one year; and

(3) at the end of the one-year period provide a report to Board Staff on whether all unsatisfied conditions of approval have been fulfilled.

(b) If the institution fails to respond or fails to remedy the deficiencies or non-compliance in accordance with subsection (a) of this section, Board Staff may recommend that the Board issue a show cause letter to the institution in accordance with subsection (c) of this section.

(c) If the Board approves the issuance of a show cause letter to a new doctoral degree or professional program that fails to satisfy all remaining conditions of approval during the one-year period referenced in subsection (a)(2) of this section, the institution shall be required to show cause why the Board shall not revoke the program approval and require teach-out and closure of the program.

(d) Program Closure and Teach-Out. If it is determined that a new doctoral degree program fails to satisfy all contingencies and conditions of approval, after responding to the show cause notice in subsection (b) of this section, Board Staff may notify the institution in writing with a recommendation to eliminate the program.

(e) If the institution chooses not to follow the recommendation, Board Staff may send the recommendation to the governing board of the institution. If the governing board does not accept the recommendation to eliminate the program, then the university system or, where a system does not exist, the institution must identify the programs recommended for closure by the Board on the next legislative appropriations request submitted by the system or institution.

§2.150. Post-Approval Program Reviews.

Board staff shall conduct post-approval reviews in accordance with subchapter I of this chapter.

§2.151. Revisions to Approved Doctoral or Professional Programs.

An institution may request a non-substantive or substantive revision or modification to an approved doctoral or professional program under subchapter A, §2.7, of this chapter (relating to informal Notice and Comment of Proposed Local Programs).

§2.152. Phasing Out a Doctoral or Professional Program.

An institution may request to phase out a doctoral or professional program under subchapter H of this chapter.

§2.153. Effective Date of Rules.

Each rule under this subchapter applies to each program for which an institution has submitted a required Planning Notification on or after June 1, 2023. For a proposed program not required to submit a Planning Notification, these rules apply to a program submitted for notification or approval on or after September 1, 2023.

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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



## SUBCHAPTER H. PHASING OUT DEGREE AND CERTIFICATE PROGRAMS

### 19 TAC §§2.170 - 2.172

The Texas Higher Education Coordinating Board (Board) proposes new rules in Title 19, Texas Administrative Code, Part 1,

Chapter 2, Subchapter H, §§2.170 - 2.172, concerning the phasing out of degree and certificate programs. Specifically, this new subchapter will outline the Board's phase-out procedures for programs to ensure the accuracy of the Program Inventory, in implementation of Texas Education Code §61.0512.

Texas Education Code §61.0512 gives the Board authority to approve new degree and certificate programs. The Board maintains a list of approved and active programs for each institution in a Program Inventory. This rule outlines procedures for maintaining the Program Inventory by creating a process for phasing out programs.

Rule 2.170, Authority, lists the section of the Texas Education Code that grants the Board authority to approve new degree and certificate programs. This authority necessitates an accurate list of approved and active programs.

Rule 2.171, Program Phase-Out Notifications, outlines the procedures and information needed to remove a program from the Board's Program Inventory. Requiring this information allows the Board to keep an accurate list of approved programs.

Rule 2.172, Effective Date of Rules, states that the rules become effective for a program an institution wants to phase out on or after September 1, 2023.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the section will be improved communication between the Board and institutions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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



Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, TX 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for thirty (30) days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code §61.0512, which provides the Board with the authority to approve new degree or certificate programs.

The proposed new rules affect Texas Education Code §61.0512.

§2.170. Authority.

Texas Education Code §61.0512 gives the Board authority to approve new degree or certificate programs. The Board maintains the list of approved programs in a Program Inventory for each institution. Establishing a phase-out procedure for programs ensures the accuracy of the Program Inventories, which is necessary for the Board to carry out its duties under Tex. Educ. Code §61.0512.

§2.171. Program Phase-Out Notification.

(a) If the institution where the program is located wishes to close the program, the institution shall:

(1) give appropriate notification to the Southern Association of Colleges and Schools Commission on Colleges or the Program's accreditor, as applicable;

(2) cease to admit new students to the program;

(3) develop and execute a teach-out plan;

(4) ensure that all courses necessary to complete the program are offered on a timely basis;

(5) close the program when the last student enrolled in the program has graduated or the teach-out period has lapsed; and

(6) notify the Board when the program is finally closed.

(b) Public institutions of higher education must notify Board Staff of intent to phase out a degree or certificate program prior to closure of the program.

(c) The institution shall provide the information required in this section by submitting the Phase Out Notification Form on the Board's website. The notification form will require the institution to submit the following information:

(1) The name, designation, and CIP Code of the degree or program, as listed in the institution's Program Inventory; and

(2) The anticipated closure date of the program.

(d) Upon receiving the Phase Out Notification Form, Board Staff will update the institution's Program Inventory to reflect the phase-out date of the program. Board Staff will remove the program from the Program Inventory at the time of the date of closure, as reported by the institution.

§2.172. Effective Date of Rules.

This rule applies to a program that an institution seeks to close on or after September 1, 2023.

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

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General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182

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SUBCHAPTER I. REVIEW OF EXISTING  
DEGREE PROGRAMS

**19 TAC §§2.180 - 2.184**

The Texas Higher Education Coordinating Board (Board) proposes new rules in Title 19, Texas Administrative Code, Part 1, Chapter 2, Subchapter I, §§2.180-2.184, concerning the review of existing degree programs. Specifically, this new subchapter will explain the review criteria and timeline of review for approved degree programs, implementing Texas Education Code §§61.0512(e) and 130.311.

Texas Education Code §61.0512(e) requires the Board to review each degree or certificate program offered by an institution of higher education at least every ten years. Texas Education Code §130.311 applies to baccalaureate degrees offered by public junior colleges and requires program review each biennium.

The rules outline how the Board meets statutory requirements regarding existing program review.

Rule 2.180, Authority, lists the sections of the Texas Education Code that require program review.

Rule 2.181, Academic Programs at Public Universities and Health-Related Institutions, outlines the criteria for review of existing baccalaureate, master's, doctoral, and professional programs at public universities and health-related institutions. The new rule makes explicit the expectations and process by which the Board fulfills the obligations of Tex. Educ. Code §61.0512(e). This process provides an opportunity for the institution to routinely engage in a continuous improvement process through examination of its own baccalaureate programs. The rule provides a comprehensive list of criteria by which each institution and the Board should assess degree programs. These criteria exist in the current rules and were developed to ensure that each institution's programs are high-quality and relevant.

Rule 2.182, Doctoral and Professional Degree Programs, outlines the criteria for review of new doctoral or professional degree programs at public universities and health-related institutions. These criteria exist in the current rules and were developed to ensure that each institution's programs are properly and successfully implemented consistent with the program's approval.

Rule 2.183, Baccalaureate Degree Programs at Public Junior Colleges, outlines criteria for review of baccalaureate degree programs at public junior colleges. This process provides an opportunity for the institution to routinely engage in a continuous improvement process through examination of its own baccalaureate programs. This review requirement in this rule aligns with statutory requirements for reviews for these types of programs under Texas Education Code §130.311.

Rule 2.184, Effective Date of Rules, states that the rules become effective for proposed programs with Planning Notifications submitted on or after June 1, 2023; for all other programs, these rules become effective September 1, 2023.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be improved communication between the Board and institutions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, TX 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for thirty (30) days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code §§61.0512(e) and 130.311, which require the review of new and existing degree programs.

The proposed new rules affect Texas Education Code §§61.0512 and 130.311.

#### §2.180. Authority.

The authority for this subchapter is Texas Education Code §61.002, which directs the Board to coordinate higher education through efficient and effective use of resources and elimination of costly program duplication; Tex. Educ. Code §61.0512(e), which requires the Board to conduct reviews of programs at least every ten years after the program's establishment; and Tex. Educ. Code §130.311, which requires public junior colleges to issue a report on their baccalaureate programs to the Board.

#### §2.181. Academic Programs at Public Universities and Public Health-Related Institutions.

(a) Each public institution of higher education, in accordance with the requirements of the institution's approved accreditor, shall

have a process to review the quality and effectiveness of existing degree programs and for continuous improvement.

(b) Board Staff shall develop a process for conducting a periodic audit of the quality, productivity, and effectiveness of each existing master's, doctoral, and professional degree program at a public institution of higher education.

(c) Each public institution of higher education offering an undergraduate degree shall participate in the Existing Program Performance Review on the schedule required by Board Staff to meet the requirements of program review established by Tex. Educ. Code §61.0512(e).

(d) Each public university and public health-related institution shall review each of its doctoral and professional degree programs at least once every ten years.

(1) On a schedule to be determined by the Commissioner, institutions shall submit a schedule of review for all doctoral programs to the Assistant Commissioner with oversight of academic program approval.

(2) Each institution shall begin each review of a doctoral or professional degree program with a rigorous self-study.

(3) As part of the required review process, an institution shall use at least two external reviewers with subject-matter expertise who are employed by institutions of higher education outside of Texas. External reviewers must be provided with the materials and products of the self-study and must participate in a site review.

(4) External reviewers must be part of a program that is nationally recognized for excellence in the discipline.

(5) External reviewers must affirm that they have no conflict of interest related to the Board, the institution, or program under review.

(6) Closely-related programs, defined as sharing the same four-digit Classification of Instructional Programs code, may be reviewed in a consolidated manner at the discretion of the institution.

(7) Institutions shall review master's and doctoral programs in the same discipline simultaneously, using the same self-study materials and reviewers. Institutions may also, at their discretion, review baccalaureate programs in the same discipline as master's and doctoral programs simultaneously.

(8) Criteria for the review of doctoral and professional programs must include, but are not limited to:

(A) Student retention rates;

(B) Student enrollment;

(C) Graduate licensure rates (if applicable);

(D) Alignment of program with stated program and institutional goals and purposes;

(E) Program curriculum and duration in comparison to peer programs;

(F) Program facilities and equipment;

(G) Program finance and resources;

(H) Program administration;

(I) Faculty Qualifications; and

(J) Employment outcomes.

(9) Institutions shall submit a report on the outcomes of each review, including the evaluation of the external reviewers and actions the institution has taken or will take to improve the program, and shall deliver these reports to Board Staff no later than 180 days after the reviewers have submitted their findings to the institution.

(10) Institutions may submit reviews of master's, doctoral, and professional programs performed for reasons of programmatic licensure or accreditation in satisfaction of the review and reporting requirements in this subsection.

(e) Each public university and health-related institution shall review all stand-alone master's programs at least once every ten years.

(1) On a schedule to be determined by the Commissioner, institutions shall submit a schedule of review for all master's programs to the Assistant Commissioner of Academic and Health Affairs.

(2) Institutions shall begin each review of a master's program with a rigorous self-study.

(3) As part of the required review process, institutions shall use at least one external reviewer with subject-matter expertise who is employed by an institution of higher education outside of Texas. The reviewers shall:

(A) Review all the materials and products of the institution's self-study.

(B) Travel to the campus for an on-site review or may be asked to conduct a remote desk review.

(C) Be part of a program that is nationally recognized for excellence in the discipline.

(D) Affirm that the reviewer has no conflict of interest related to the Board, the institution, or program under review.

(4) Each institution may review closely-related programs--defined as sharing the same four-digit Classification of Instructional Programs code--in a consolidated manner at the discretion of the institution.

(5) Each institution may review a master's degree program in the same six-digit Classification of Instructional Programs code as doctoral programs simultaneously with their related doctoral programs.

(6) Criteria for the review of a master's degree programs must include, but are not limited to:

(A) Faculty qualifications;

(B) Faculty publications and awards;

(C) Faculty external grants;

(D) Faculty teaching load;

(E) Faculty/student ratio;

(F) Student demographics;

(G) Student time-to-degree;

(H) Student publications and awards;

(I) Student retention rates;

(J) Student graduation rates;

(K) Student enrollment;

(L) Graduate licensure rates, if applicable;

(M) Graduate placement (i.e. employment or further education/training);

(N) Number of degrees conferred annually;

(O) Alignment of program with stated program and institutional goals and purposes;

(P) Program curriculum and duration in comparison to peer programs;

(Q) Program facilities and equipment;

(R) Program finance and resources; and

(S) Program administration.

(7) Each institution shall submit a report of the outcomes of each review, including the evaluation of the external reviewer(s) and actions the institution has taken or will take to improve the program, and shall deliver these reports to the Assistant Commissioner with oversight of academic approval not later than 180 days after the reviewer(s) have submitted their findings to the institution.

(8) Each institution may submit reviews of graduate programs performed for reasons of programmatic licensure or accreditation in satisfaction of the review and reporting requirements in this subsection.

(f) Board Staff shall review all reports submitted for a master's, doctoral, or professional degree program and shall conduct analysis as necessary to ensure high quality. The Commissioner may require an institution to take additional actions to improve its program as a result of Board review.

#### §2.182. Doctoral and Professional Degree Programs.

(a) Board Staff shall monitor a new doctoral or professional degree program for a period of five years following implementation of the program to ensure that any conditions of approval stipulated by the Board have been satisfied by the end of that period.

(b) The institution shall describe progress toward satisfaction of any conditions of approval to Board Staff in the new doctoral and professional program's annual reports to the Board.

(c) Board Staff shall not require a new doctoral or professional degree program that adequately satisfied all conditions of approval during the first five years following program implementation to submit further annual reports unless directed to do so by the Commissioner.

(d) The Commissioner may require any reporting necessary to determine whether the program remains in compliance with the terms of its program approval or these rules.

#### §2.183. Baccalaureate Degree Programs at Public Junior Colleges.

(a) Each public junior college offering a baccalaureate degree program under this subchapter shall conduct a review of each baccalaureate degree program offered and prepare a biennial report on the operation, quality, and effectiveness of the baccalaureate degree programs in a format specified by the Board. A copy of the report shall be delivered to the Board by January 1 of each odd numbered year.

(b) The Commissioner may require any reporting necessary to determine whether the program remains in compliance with the terms of its program approval, statute, or these rules.

#### §2.184. Effective Date of Rules.

Each rule under this subchapter applies to a review of a program for which an institution has submitted a required Planning Notification on or after June 1, 2023, or submitted its program approval request on or after September 1, 2023. For all other programs, including proposed programs not required to submit a Planning Notification, these rules apply on or after September 1, 2023.

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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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## CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER O. OPEN EDUCATIONAL RESOURCES GRANT PROGRAM

#### 19 TAC §§4.230 - 4.233, 4.236, 4.237

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter O, §§4.230 - 4.233, §4.236, and §4.237, concerning the Open Educational Resources Grant Program. Specifically, this amendment will facilitate the administration of the Open Educational Resources Grant Program.

The proposed amendments substitute institutions of higher education as grantees in lieu of individual faculty members in the current rule. This amendment will facilitate the administration of the grant program by Coordinating Board staff and remove undue burden of grant administration for individual faculty members by having an institution of higher education serve as the fiscal home for grants.

The Coordinating Board convened a negotiated rulemaking committee, comprised of higher education institutional representatives with expertise in open educational resources. The negotiated rulemaking committee met once on May 12, 2022, to develop the proposed rules. The negotiated rulemaking committee developed the proposed rules in alignment with Texas Education Code §61.0331, which directs the THECB to employ the negotiated rulemaking process described in Chapter 2008 of the Texas Government Code when adopting rules relating to trusted funds allocation methodologies.

Dr. Michelle Singh, Assistant Commissioner for Digital Learning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Michelle Singh has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the facilitation

of administration of the Open Educational Resources Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Dr. Michelle Singh, Assistant Commissioner for Digital Learning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [digitallearning@highereducation.texas.gov](mailto:digitallearning@highereducation.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the General Appropriations Act, Senate Bill 1, Article III, Section 49, 87th Texas Legislature, Regular Session, Rider 49, which provides the Coordinating Board with the authority to administer the Open Educational Resources Grant Program enacted by Senate Bill 810, 85th Legislature, 2017 and was codified as Texas Education Code, Section 61.0668. Section 61.0668 of the Texas Education Code expired on September 1, 2021.

#### §4.230. *Purpose.*

The purpose of this subchapter is to implement rules to establish the Open Educational Resources (OER) Grant Program, under which the Board awards grant payments to eligible ~~institutional faculty employed by a~~ Texas institutions of higher education ~~[higher education institution]~~, as defined in Texas Education Code 61.003(8), to adopt, modify, redesign, or develop one or more courses using only open educational resources.

#### §4.231. *Authority.*

The authority for this subchapter is found in Texas Education Code, Chapter 61, Subchapter 61.0668, which provides the board with the authority to adopt rules to administer this grant program, and Senate Bill 1, 87th Texas Legislature, Regular Session, Rider 49.

#### §4.232. *Definitions.*

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

- (1) Board or THECB--The Texas Higher Education Coordinating Board.
- (2) Commissioner--The Commissioner of Higher Education.
- (3) Eligible Applicant--A Texas institution of higher education as defined in Texas Education Code 61.003(8). ~~[A faculty member as defined in Texas Education Code 51.917 or group of faculty currently employed at an institution of higher education, as defined in Texas Education Code 61.003(8)-]~~

(4) Institution of Higher Education--Any public technical institute, public junior college, public senior college or university, or medical or dental unit, or other agency of higher education as defined by Texas Education Code, 61.003(8).

(5) Open Educational Resources (OER)--A teaching, learning, or research resource that is in the public domain or has been released under an intellectual property license that permits the free use, adaptation, and redistribution of the resource by any person. The term may include full course curricula, course materials, modules, textbooks, media, assessments, software, and any other tools, materials, or techniques, whether digital or otherwise, used to support access to knowledge, as defined in Texas Education Code 51.451(4-a).

(6) Request for Applications (RFA)--A type of solicitation notice in which the THECB announces available grant funding, sets forth the guidelines governing the program, provides evaluation criteria for submitted applications, and provides instructions for eligible entities to submit applications for such funding. The guidelines governing the program may include a Letter of Intent, eligibility requirements, performance expectations, budget guidelines, reporting requirements, and other standards of accountability for this program.

*§4.233. Eligibility.*

Texas institutions of higher education as defined by Texas Education Code 61.003(8) [~~Faculty employed by a Texas public institution of higher education~~] are eligible to apply for a grant under this program.

*§4.236. Review Criteria.*

Applicants shall be selected for funding based on requirements and award criteria provided in the RFA. Award criteria will include, but may not be limited to, consideration of the following factors:

~~(1) The number of students projected to annually enroll in the course;~~

(1) ~~(2)~~ The projected amount of money saved [by a student] due to the use of OER in the course; and

(2) ~~(3)~~ The evaluation of the application by three selected qualified reviewers [of the curriculum of the course], as determined by Board staff.

*§4.237. Reporting Criteria.*

Grantees must file reports with Board staff as required by the RFA for each applicable course for each of the four semesters immediately following OER implementation. Grantees will provide information that includes, but is not limited to, the following:

(1) The number of students who have completed the course associated with the grant;

(2) An estimate of the amount of money saved [by a student] due to the use of OER [open educational resources] in the course;

(3) A description of the OER [open educational resources] used in the course;

(4) The number of [other] faculty members known to have [; if any, who] adopted the OER associated with the grant for a [curriculum of the] course [associated with the grant]; and

(5) Any other information required by the RFA.

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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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## CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §22.2

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A, §22.2, concerning General Provisions. Specifically, this amendment will modify subsections (1) through (3) to integrate the work-study disbursement process. Subsection (4) is removed, as it will be replaced by Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter G, §22.135. The amendment to the administrative rule is necessary to implement the amended allocation methodology for the Texas College Work-Study Program and the Work-Study Student Mentorship Program that was developed through negotiated rulemaking.

Texas Education Code 56.077 allows the Coordinating Board to adopt reasonable rules necessary to enforce the requirements, conditions, and limitations of Texas Education Code, Chapter 56, Subchapter E, Texas College Work-Study Program. To achieve the requirements of the Subchapter E, a rule is necessary to outline the process by which funds received by the institution are used to pay students for their work-study employment.

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

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

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the amendment of the administrative rule necessary to implement the amended allocation methodology for the Texas College Work-Study Program and the Work-Study Student Mentorship Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 56.077, which provides the Coordinating Board with the authority to adopt reasonable rules necessary to enforce the requirements, conditions, and limitations of Texas Education Code, Chapter 56, Subchapter E, Texas College Work-Study Program.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter E.

*§22.2. Timely Distribution of Funds.*

All institutions participating in the financial aid programs outlined in Chapter 22 shall follow the guidelines for the timely distribution of funds, as outlined in ~~in [within paragraph (1) - (4) of]~~ this section:

(1) **Timely Disbursement.** Institutions shall disburse state student financial aid funding~~], excepting work-study,~~ to a student recipient's account ~~or, in the case of work-study, through a paycheck,~~ no later than three business days after receiving the funds. Undisbursed funds must be returned to the Board no later than six business days after the receipt of funds. Gift aid and work-study funds for which a student is no longer eligible may be disbursed to a different eligible student for whom funds have not yet been requested in order to meet the timely disbursement requirement.

(2) **Timely Determination of Ineligibility.** For state student financial aid funding already disbursed to a student, except work study, institutions shall return funds to the Board within 45 calendar days of a student becoming ineligible for the funding. Gift aid funds for which a student has been determined ineligible may be disbursed to a different eligible student for whom funds have not yet been requested in order to meet the timely determination of ineligibility requirement. In all cases, an institution must provide notification to the Board regarding the change in student eligibility, as appropriate for the particular student financial aid program.

(3) **Timely Cancellation.** For state student financial aid funds already disbursed to a student, ~~except work-study,~~ institutions may return funds to the Board within 120 calendar days of disbursement in situations where a student has notified the institution of his or her decision to cancel the financial aid. Gift aid funds for which a student has made the decision to cancel may be disbursed to a different eligible student for whom funds have not yet been requested in order to meet the timely cancellation requirement. In all cases, an institution must provide notification to the Board regarding the student's decision to cancel financial aid, as appropriate for the particular student financial aid program.

~~[(4) Texas College Work-Study. Funds for the Texas College Work-Study program are provided to institutions as a lump sum at the start of each fiscal year and are subject to the reallocation guidelines outlined in §21.407 of the Texas Administrative 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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Nichole Bunker-Henderson

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Texas Higher Education Coordinating Board

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



## SUBCHAPTER G. TEXAS COLLEGE WORK-STUDY PROGRAM

### 19 TAC §22.128, §22.133

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter G, §§22.128 and 22.133, concerning the Texas College Work-Study Program. Specifically, this amendment will modify the Texas College Work-Study Program allocation process based on the consensus reached by the negotiated rulemaking committee. The proposed amendments (in addition to revisions affecting 19 TAC §22.2 and §22.135) are necessary in order to implement the substantive changes upon which the Negotiated Rulemaking Committee on Texas College Work Study reached consensus (May 10, 2022).

Section 22.128 is amended to add the definition of forecasting to be used in the allocation methodology.

Section 22.133 is amended to alter the allocation methodology used for the Texas College Work-Study Program and the Work-Study Student Mentorship Program, beginning with Fiscal Year 2024. The consensus reached by the negotiated rulemaking committee includes combining the Texas College Work-Study Program and the Work-Study Student Mentorship Program allocations into one allocation methodology, using the average of three years of data when calculating allocations, providing allocations for each year of the biennium at the same time, providing additional weight in the methodology for students enrolled three-quarter-time, aligning the Expected Family Contribution used for allocation purposes with the federal Pell Grant program, and indicating how reductions in funding would be handled. Aspects of the allocation rule regarding reallocations and summer awards are removed, as they are no longer relevant.

Texas Education Code 61.0331 requires negotiated rulemaking when adopting a rule related to the allocation or distribution of funding, including financial aid and other trustee funds. Texas Education Code 61.07761 requires the Coordinating Board to establish and publish the allocation methodologies and to develop procedures to verify the accuracy of the application of those allocation methodologies by Coordinating Board staff.

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

increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increased predictability of institutional allocations and greater institutional flexibility for the Texas College Work-Study Program and the Work-Study Student Mentorship Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0331, which provides the Coordinating Board with the authority to undertake negotiated rulemaking when adopting a rule relating to the allocation or distribution of funds, including financial aid or other trusted funds.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter E.

#### §22.128. Definitions.

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

- (1) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.
- (2) Forecast--The FORECAST function in Microsoft Excel, or a comparable forecasting function.
- (3) [(2)] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in Texas Education

Code, §61.003(8) or any private or independent institution of higher education as defined in Texas Education Code, §61.003(15).

(4) [(3)] Program--The Texas College Work-Study Program.

(5) [(4)] Mentor--An eligible student employed to:

(A) help students at participating eligible institutions or to help high school students in participating school districts;

(B) counsel high school students at [GO Centers or similar] high school-based recruiting centers designed to improve access to higher education; or

(C) support student interventions at participating eligible institutions that are focused on increasing completion of degrees or certificates, such as interventions occurring through advising or supplemental instruction.

(6) [(5)] Mentorship Program--A work-study student mentorship program under which students enrolled at participating institutions and who met the eligibility requirements for employment in the Texas College Work-Study Program may be employed by participating entities as mentors, tutors, or advisors.

(7) [(6)] Participating Entity--An eligible institution, a school district, or a nonprofit organization that has filed a memorandum of understanding with the Coordinating Board under this subchapter to participate in the Mentorship Program.

#### §22.133. Allocation [and Disbursement] of Funds.

(a) Allocations for Fiscal Year 2024 and later. Allocations for the Program are to be determined on an annual basis as follows:

(1) All eligible institutions will be invited to participate in the Texas College Work-Study Program and/or the Work-Study Mentorship Program, prior to the start of the biennium; those choosing not to participate will be excluded from calculations for the relevant year.

(2) The annual allocation share for each institution choosing to participate will be its three-year average share of the total statewide number of students who met the following criteria:

(A) were classified as Texas residents;

(B) were enrolled in a degree or certificate program at least half-time, with full-time students weighted as 1, three-quarter time students weighted as 0.75, and halftime students weighted as 0.50, as reported in the Financial Aid Database submission; and

(C) have a 9-month Expected Family Contribution, calculated using federal methodology, less than or equal to the Federal Pell Grant eligibility cap for the year reported in the Financial Aid Database submission.

(3) Institutions indicating participation in both the Texas College Work-Study and the Work-Study Mentorship Program will have their number of students who meet the criteria listed above increased by 60% prior to the calculation of the allocation shares.

(4) Institutions indicating participation in only one of the Texas College Work-Study and the Work-Study Mentorship Programs may only use allocated funding for the program in which they indicated intention to participate. Institutions indicating participation in both the Texas College Work-Study and the Work-Study Mentorship Program must disburse a minimum of 25% of their allocation to students participating in the Mentorship Program.

(5) Sources of data. The source of data used for the allocations are the three most recently certified Financial Aid Database reports submitted to the Board by the institutions.

(6) Allocations for both years of the state appropriations' biennium will be completed at the same time. For the allocation process of the second year of the state appropriations' biennium, the sources of data outlined in paragraph (5) of this subsection will be utilized to forecast an additional year of data. This additional year of data, in combination with the two most recent years outlined in paragraph (5) of this subsection, will be utilized to calculate the three-year average share outlined in paragraph (2) of this subsection. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(b) ~~[(a)]~~ Allocations for Fiscal Year 2023 and prior. Allocations for the Program are to be determined on an annual basis as follows:

(1) All eligible institutions will be invited to participate; those choosing not to participate will be left out of the calculations for the relevant year.

(2) The allocation base for each institution choosing to participate will be the number of students it reported in the most recent financial aid database report who met the following criteria:

(A) were classified as Texas residents;

(B) were enrolled at least half-time, with full-time students weighted as 1 and part-time students weighted as .5;

(C) completed either the FAFSA or TASFA; and

(D) have a 9-month Expected Family Contribution less than the simple average in-district 9-month cost of attendance for community college students enrolled for 30 semester credit hours while living off campus, as reported in the most recent year's College Student Budget Report.

(3) Each institution's share of the available funds will equal its share of the state-wide total of students who meet the criteria in paragraph (2) of this subsection.

(c) ~~[(b)]~~ Verification of Data. Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

(d) Reductions in Funding.

(1) If annual funding for the program is reduced after the start of a fiscal year, the Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding is reduced prior to the start of a fiscal year, the Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

~~[(e) Disbursements. At the beginning of each year or upon request by the institution, the year's full allocation or funds needed for immediate disbursement to students will be provided to each participating institution for use in reimbursing students for their work.]~~

~~[(d) Reallocations. Institutions will have until February 20 or the first workday thereafter if it falls on a holiday or a weekend to encumber all funds allocated to them. On that date, institutions lose claim to their unencumbered funds and the unencumbered funds are available to the Board for reallocation to other institutions requesting reallocated funds, calculated on the same basis as the original allocation. If nec-~~

~~essary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.]~~

~~[(e) Summer Awards. Unless given specific permission by the Board to use funds for summer awards, schools will be required to utilize their original state work-study allocation of funds for employment during the nine-month academic year (fall and spring terms). However, institutions may use reallocated funds for summer awards but the funds must be expended by August 31 of the fiscal 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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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



## 19 TAC §22.134

The Texas Higher Education Coordinating Board (Coordinating Board) proposes repeal of Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter G, §22.134, concerning the Texas College Work-Study Program. Specifically, this repeal will modify the Texas College Work-Study Program allocation process based on the consensus reached by the negotiated rulemaking committee.

Rule 22.124 is repealed to remove the individual allocation methodology for the Work-Study Student Mentorship Program, which allows the Texas College Work-Study Program and Work-Study Student Mentorship Program allocations to be combined into one allocation methodology.

Texas Education Code 61.0331 requires negotiated rulemaking when adopting a rule related to the allocation or distribution of funding, including financial aid and other trusteed funds. Texas Education Code 61.07761 requires the Coordinating Board to establish and publish the allocation methodologies and to develop procedures to verify the accuracy of the application of those allocation methodologies by Coordinating Board staff.

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

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

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increased predictability of institutional allocations and greater institutional flexibility for the Texas College Work-Study Program



and the Work-Study Student Mentorship Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, P.O. Box 12788, Austin, TX 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.0331, which provides the Coordinating Board with the authority to undertake negotiated rulemaking when adopting a rule relating to the allocation or distribution of funds, including financial aid or other trusteed funds.

The proposed repeal affects Texas Education Code, Chapter 56, Subchapter E.

#### *§22.134. Allocation and Disbursement of Mentorship Program Funds.*

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 July 11, 2022.

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Nichole Bunker-Henderson  
General Counsel

Texas Higher Education Coordinating Board

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



#### **19 TAC §22.135**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter G, §22.135, concerning the Texas College Work-Study Program. Specifically, this new rule will outline the timing by which institutions may request funds, deadlines for requesting funds, and the way unused allocations will be handled. The new rule is proposed to create the administrative rule to efficiently implement the amended allocation methodology for the Texas College Work-Study Program and the Work-Study Student Mentorship Program developed through negotiated rulemaking.

Texas Education Code 56.077 allows the Coordinating Board to adopt reasonable rules necessary to enforce the requirements, conditions, and limitations of Texas Education Code, Chapter 56, Subchapter E, Texas College Work-Study Program. To achieve the requirements of Subchapter E, this rule outlines the process by which the THECB shall disburse funds to institutions for use in paying students for their work-study employment.

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

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

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the creation of the administrative rule necessary to implement the amended allocation methodology for the Texas College Work-Study Program and the Work-Study Student Mentorship Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, P.O. Box 12788, Austin, TX 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rule is proposed under Texas Education Code, Section 56.077, which provides the Coordinating Board with the authority to adopt reasonable rules necessary to enforce the requirements, conditions, and limitations of Texas Education Code, Chapter 56, Subchapter E, Texas College Work-Study Program.

The proposed new rule affects Texas Education Code, Chapter 56, Subchapter E.

#### *§22.135. Disbursement of Funds.*

(a) As requested by institutions throughout the academic year, the Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students.

(b) Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation for timely disbursement to students. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Board for timely disbursement to students.

(c) Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board for utilization in financial aid processing.

(d) Should these unspent funds result in additional funding available for the next year's program, revised allocations, calculated according to the allocation methodology outlined in this subchapter, will be issued to participating institutions during the fall semester.

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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Nichole Bunker-Henderson

General Counsel

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## CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS SUBCHAPTER D. LOAN REPAYMENT PROGRAM FOR MENTAL HEALTH PROFESSIONALS

### 19 TAC §§23.94 - 23.96, 23.98

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter D, §§23.94, 23.95, 23.96, and 23.98, concerning Loan Repayment Program for Mental Health Professionals. Specifically, this amendment will remove unnecessary references to the Health Resources and Services (HRSA) federal State Loan Program (SLRP) in Texas Administrative Code, Sections 23.94, 23.95, 23.96, and 23.98.

Texas Education Code, Section 61.608 requires the Coordinating Board to adopt rules for the repayment of student loans for mental health professionals who apply and qualify for the assistance authorized under Chapter 61, Subchapter K. Amending the rule acknowledges the intent of the statute which is to administer the Loan Repayment Program for Mental Health Professionals.

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

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

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

Charles W. Contéro-Puls, Ed.D., Assistant Commissioner for Student Financial Aid Services, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be providing greater clarity regarding administrative aspects of the administrative code related to the Loan Repayment Program for Mental Health Professionals by removing unnecessary references to a separate federal program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Services, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Chapter 61, Subchapter K, which provides the Coordinating Board with the authority to establish rules to administer the repayment of student loans for mental health professionals.

The proposed amendment affects Texas Education Code, §§61.601 - 61.608.

### §23.94. Definitions.

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

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.
- (3) Full-time Service--Employed or contracted full-time (at least 32 hours per week for providers participating only in the state-funded program, or at least 40 hours per week for SLRP providers) by an agency or facility in a mental health professional

shortage area for the primary purpose of providing direct mental health services to:

- (A) Medicaid recipients;
- (B) CHIP enrollees;
- (C) persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or
- (D) persons in facilities operated by or under contract with the Texas Department of Criminal Justice.

(4) MHPSAs--Mental Health Professional Shortage Areas (MHPSAs) are designated by the U.S. Department of Health and Human Services (HHS) as having shortages of mental health providers and may be geographic (a county or service area), demographic (low income population) or institutional (comprehensive health center, federally qualified health center or other public facility). Designations meet the requirements of Sec. 332 of the Public Health Service Act, 90 Stat. 2270-2272 (42 U.S.C. 254e). Texas MHPSAs are recommended for designation by HHS based on analysis of data by the Department of State Health Services.

(5) Medicaid--The medical assistance program authorized by Chapter 32, Human Resources Code.

(6) Service Period--A period of 12 consecutive months qualifying a mental health professional for loan repayment.

~~[(7) SLRP--State Loan Repayment Program, a subset of the Loan Repayment Program for Mental Health Professionals that is funded by grants to states authorized by the Public Health Service Act, Title III, §3381(a)-(i)(42 U.S.C. 254q-1(a)-(i)), through the Health Resources and Services Administration of the U.S. Department of Health and Human Services. SLRP loan repayment awards are supported by an equal match of state and federal funds.]~~

~~(7) [(8)] Psychiatrist--A licensed physician who is a graduate of an accredited psychiatric residency training program.~~

*§23.95. Eligible Practice Specialties.*

For purposes of this subchapter, the following mental health providers may apply for enrollment in the program:

- (1) a psychiatrist;
- (2) a psychologist, as defined by §501.002, Occupations Code;
- (3) a licensed professional counselor, as defined by §503.002, Occupations Code;
- (4) an advanced practice registered nurse, as defined by §301.152, Occupations Code, who holds a nationally recognized board certification in psychiatric or mental health nursing;
- (5) a licensed clinical social worker, as defined by §505.002, Occupations Code;
- (6) a licensed chemical dependency counselor, as defined by §504.001, Occupations Code~~]; and, if applying for enrollment in the SLRP, must hold a master's degree in a related field]; and~~
- (7) a licensed marriage and family therapist, as defined by §502.002, Occupations Code.

*§23.96. Eligibility for Conditional Approval of Applications.*

To be eligible for the Board to reserve loan repayment funds, a mental health professional must:

- (1) ensure that the Board has received the completed application by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident and have no license restrictions;

(3) not be currently fulfilling another obligation to provide mental health services as part of a scholarship agreement, a student loan agreement, or another student loan repayment agreement;

(4) agree to provide five consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and

(5) agree to provide mental health services to:

(A) Individuals enrolled in Medicaid or CHIP or both; or

(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.~~];~~

~~[(6) a completed application for enrollment in the SLRP includes an agreement to all contract terms, including monetary penalties for failure to complete the service obligation; in addition to completion of counseling procedures established by Board staff to ensure the applicant's understanding of contract terms.]~~

*§23.98. Eligibility for Disbursement of Loan Repayment Assistance.*

To be eligible to receive loan repayment assistance, a mental health provider must:

(1) have completed one, two, three, four, or five consecutive years of practice in an MHPSA providing direct patient care to Medicaid enrollees and/or CHIP enrollees, if the practice serves children, or to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor; and

(2) after an award is disbursed for a third consecutive year of service, a psychiatrist must have earned certification from the American Board of Psychiatry and Neurology or the American Osteopathic Board of Psychiatry and Neurology to qualify for continued loan repayment assistance.~~]; and~~

~~[(3) if applying for SLRP funds, have met any additional requirements stated in the completed SLRP application for enrollment.]~~

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 July 11, 2022.

TRD-202202577

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: August 21, 2022

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



## PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS  
SUBCHAPTER C. LOCAL OPERATIONS

19 TAC §66.105

The State Board of Education (SBOE) proposes an amendment to §66.105, concerning state adoption and distribution of instructional materials. The proposed amendment would add a certification requirement to align with Senate Bill (SB) 1, 87th Texas Legislature, Regular Session, 2021.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 66.105 addresses local education agency certification for providing each student with instructional materials covering of all elements of the essential knowledge and skills adopted by the SBOE for each subject and each grade level, other than physical education.

SB 1, 87th Texas Legislature, Regular Session, 2021, directed the SBOE to ensure that recipients of funds from the state instructional materials and technology fund meet the requirements for certification under 47 USC §254(h)(5)(B) and (C), Children's Internet Protection Act, when using those funds to purchase instructional materials or technology. The proposed amendment to §66.105 would add new subsection (b) to clarify the instructional materials certification requirements for school districts and open-enrollment charter schools regarding children's internet safety in accordance with SB 1.

The SBOE approved the proposed amendment for first reading and filing authorization at its June 17, 2022 meeting.

**FISCAL IMPACT:** Kristen Hole, associate commissioner for instructional strategy, has determined that there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding a requirement for school districts and open-enrollment charter schools to certify that the district or charter school protects against access to obscene or harmful content in compliance with the requirements for certi-

fication under the Children's Internet Protection Act, 47 USC §254(h)(5)(B) and (C).

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:** Ms. Hole has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that districts are aware of the requirement to protect students from harmful or inappropriate content on the internet. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins July 22, 2022, and ends at 5:00 p.m. on August 26, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in August-September 2022 in accordance with the SBOE board operating policies and procedures. 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 July 22, 2022.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.102, which requires the State Board of Education (SBOE) to adopt rules related to TEC, Chapter 31; TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.004, which requires annual certification to the SBOE and commissioner that the district or open-enrollment charter provides instructional materials to cover the Texas Essential Knowledge and Skills; TEC, §31.005, which authorizes an open-enrollment charter school to use the instructional materials allotment and subjects the school to TEC, Chapter 31, as if the school were a school district; TEC, §31.0211, which authorizes school districts to receive a biennial allotment from the state instructional materials and technology fund and for the commissioner to adopt rules related to the allotment; TEC, §31.101, which requires a school district board of trustees or a governing body of an open-enrollment charter school to notify the SBOE of instructional materials selected; Senate Bill 1, Article III, 87th Texas Legislature, Regular Session, 2021, which directed the SBOE to ensure that recipients of funds from the state instructional materials and technology fund meet the requirements for certification under the Children's Internet Protection Act when using those funds to purchase instructional materials or technol-

ogy; and 47 USC §254(h)(5)(B) and (C), Children's Internet Protection Act, which requires school districts and open-enrollment charter schools to certify with respect to minors and adults that it is enforcing a policy of internet safety that protects against access to visual depictions that are obscene or child pornography.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102, 31.003, 31.004, 31.005, 31.0211, and 31.101; Senate Bill 1, Article III, 87th Texas Legislature, Regular Session, 2021; and 47 USC §254(h)(5)(B) and (C).

§66.105. *Certification by School Districts.*

(a) Prior to the beginning of each school year, each school district and open-enrollment charter school shall submit to the State Board of Education (SBOE) and commissioner of education certification that for each subject in the required curriculum under the Texas Education Code, §28.002, other than physical education, and each grade level, the district or charter school provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE. The certification shall be submitted in a format approved by the commissioner [of education] and can be based on both state-adopted and non-state-adopted materials.

(b) Each school district or open-enrollment charter school shall certify, in a format approved by the commissioner, that the district or charter school protects against access to obscene or harmful content in compliance with the requirements for certification under the Children's Internet Protection Act, 47 USC §254(h)(5)(B) and (C).

(c) [(b)] The certifications shall be ratified by local school boards of trustees or governing bodies in public, noticed meetings.

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

Filed with the Office of the Secretary of State on July 11, 2022.

TRD-202202587

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 21, 2022

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



## **TITLE 22. EXAMINING BOARDS**

### **PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

#### **CHAPTER 138. COMPLIANCE AND PROFESSIONALISM FOR SURVEYORS**

##### **SUBCHAPTER B. SEALING REQUIREMENTS**

###### **22 TAC §138.33**

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 138, regarding Compliance and Professionalism for Surveyors, and specifically §138.33, relating to Sealing Procedures. These proposed changes are referred to as "proposed rules."

## **BACKGROUND AND SUMMARY**

The rules under 22 Texas Administrative Code, Chapter 138 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act and Texas Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act. The proposed rules address the process for signing and sealing state land surveying work.

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

The proposed rules amend §138.33 by stating that state land surveying work does not have to be sealed with a registered professional land surveyor seal, that the Board's sealing procedures apply only to land located in Texas, and that state land surveying work must be sealed with the licensed state land surveyor's seal, signature, printed name, and license number.

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

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

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

## **LOCAL EMPLOYMENT IMPACT STATEMENT**

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

## **PUBLIC BENEFITS**

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

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

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules require nothing new of anyone.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do

not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules create a new regulation by shifting the way the Board enforces the use of a surveyor's seal.
6. The proposed rule does not expand an existing regulation.
7. The proposed rules do not increase the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### ENVIRONMENTAL RULE ANALYSIS

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

#### PUBLIC COMMENTS

Any comments or requests for a public hearing may be submitted, no later than August 12, 2022, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to [rules@pels.texas.gov](mailto:rules@pels.texas.gov); via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

#### STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201, 1001.202, and 1001.207, which authorize the Board to administer and enforce the engineering and land surveying laws; to adopt and enforce all rules, regulations, and bylaws consistent with the Act as necessary for the perfor-

mance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state; and to establish standards of conduct and ethics for engineers and land surveyors in keeping with the purposes and intent of the engineering and land surveying laws and to ensure strict compliance with and enforcement of those laws.

#### SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1071.301, 1071.351-361.

##### §138.33. *Sealing Procedures.*

(a) - (i) (No change.)

(j) Any surveying work issued by a registration holder for land or property in this state, except for surveying work that constitutes state land surveying, as defined in §1071.002 of the Surveying Act, must include the registration holder's registered professional land surveyor seal placed on the document. A registration holder is not required to use a Texas seal if the surveying work is not located in Texas [another state or country].

(k) - (m) (No change.)

(n) A licensed [Licensed] state land surveyor [surveyors] must sign and seal surveying documents and surveying work submitted to the General Land Office, including field notes, plats, and reports, with the licensee's [both their registered professional land surveyor seal and the] licensed state land surveyor seal. In addition to being signed and sealed with the licensed state land surveyor's seal, state land surveying documents and surveying work must also include the licensed state land surveyor's printed name and license number.

(o) (No change.)

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202553

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: August 21, 2022

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

## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 331. LIDDA SERVICE COORDINATION

##### 26 TAC §331.17

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §331.17, concerning Minimum Qualifications.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to change minimum qualifications for service coordinators in §331.17. Local intellectual and developmental disability authorities (LIDDAs) across Texas are

reporting workforce challenges, particularly among service coordinators, who generally must have at least a bachelor's degree in a human services-related field of study, unless they meet specific requirements in addition to having a high school diploma. Expanding the hiring qualifications for service coordinators will give LIDDAs an increased pool of skilled applicants, who may not have advanced degrees but are qualified to monitor services for people with intellectual and developmental disabilities based on previous unpaid or paid experiences. Expanding qualification requirements could have long-term positive effects for a vulnerable population that relies on LIDDA service coordinators to assist them in securing the services they need and achieving their desired outcomes and best quality of life.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §331.17 updates rule language to reflect the change in terminology from "Mental Retardation Authority" to LIDDA.

The proposed amendment to §331.17(b) expands minimum service coordinator qualifications by removing the field of study requirement for a service coordinator with a bachelor's degree and adding an associate degree in a human services-related field. The amendment also changes the hiring qualifications for a service coordinator with a high school diploma by allowing two years paid or unpaid experience with individuals with intellectual or developmental disabilities and removing additional requirements, such as completion of Partners in Policy Making training.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the 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 new rule;
- (6) the proposed rule will not expand existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The amendment does not require small businesses or micro-businesses to change current business practices to the detriment of any small business or micro-business.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, and the rule does not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner for IDD and Behavioral Health Services, has determined that for each year of the first five years the rule is in effect, the public benefit is that there will be increased job opportunities for Texans. LIDDAs will have the ability to hire from a larger pool of qualified applicants to provide continuous services to individuals with intellectual and developmental disabilities.

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. The proposed rule doesn't add any new fees or costs for 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 HHSC IDD Services, Brandi Lambert, Mail Code 354, P.O. Box 149030, Austin, Texas 78714-9030, or by email to [iddservicespolicyandrules@hhs.texas.gov](mailto:iddservicespolicyandrules@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 22R096" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program; and Texas Health & Safety Code §533A.0355(a), which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

The amendment affects Texas Government Code §531.0055 and §531.021, Texas Human Resources Code §32.021, and Texas Health & Safety Code §533A.0355(a).

§331.17. *Minimum Qualifications.*

(a) Service coordination may be provided only by an employee of the LIDDA [MRA].

(b) Except as provided by subsections (d), (e), and (f) of this section, a staff person providing service coordination must have:

(1) a bachelor's or advanced degree from an accredited college or university [with a major in a social, behavioral, or human service field including, but not limited to, psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human development, gerontology, educational psychology, education, and criminal justice]; [or]

(2) an associate degree in a social, behavioral, human service, or health-related field including, psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human development, gerontology, educational psychology, education, and criminal justice; or

(3) [(2)] a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and two years of paid or unpaid experience with individuals with intellectual or developmental disabilities.[:]

[(A) two years of paid experience as a case manager in a state or federally funded Parent Case Management Program or have graduated from Partners in Policy Making; and]

[(B) personal experience as an immediate family member of an individual with mental retardation.]

(c) The LIDDA [MRA], at its discretion, may require additional education and experience for staff who provide service coordination.

(d) At the discretion of the LIDDA [MRA], a staff person who was authorized by a LIDDA [an MRA] to provide service coordination prior to April 1, 1999, may provide service coordination without meeting the minimum qualifications described in subsection (b) of this section.

(e) Until December 31, 2011, a LIDDA [an MRA] may hire a person to provide service coordination who was employed as a case manager for an HCS Program provider for any period of time prior to June 1, 2010, even if the person does not meet the minimum qualifications described in subsection (b) of this section.

(f) Beginning January 1, 2012, a LIDDA [an MRA] may hire a person to provide service coordination who was hired by another LIDDA [MRA] in accordance with subsection (e) 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.

Filed with the Office of the Secretary of State on July 7, 2022.

TRD-202202556

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 21, 2022

For further information, please call: (512) 438-5609



## CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§745.273, 745.275, 745.277, and 745.435 in Title 26, Texas Administrative Code, Chapter 745, Licensing.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement sections of statute that were amended by Senate Bill (S.B.) 225, 87th Texas Legislature, Regular Session, 2021.

S.B. 225, Sections 5 and 9, amended Texas Human Resources Code (HRC) §42.048(e) and §42.048(e-3) to (1) delete the requirement that a license or certificate is automatically revoked when certain operations change location (although HRC §42.048 only explicitly applies to licensed operations, this provision also applies to certified operations by way of HRC §42.052(b)); (2) require the operation to inform HHSC Child Care Regulation (CCR) of the new location before moving there; and (3) allow the operation to operate at the new location after CCR approves the location as meeting all relevant requirements.

S.B. 225 took effect on September 1, 2021, and applies to the following operation types that may now change location without their license or certification being automatically revoked: (1) all school-age programs, regardless of when they operate; (2) before or after-school programs; (3) licensed child-care homes; (4) child-care centers; and (5) general residential operations (GROs). Child-placing agencies (CPAs) were able to change location without the statutory changes made by S.B. 225. However, the bill repealed the subsection that explicitly addressed CPAs, so CCR is aligning requirements for CPAs with those for other licensed or certified operation types for consistency.

Another purpose of the proposal is to implement sections of statute that were added by S.B. 781, 86th Texas Legislature, Regular Session, 2019. CCR is clarifying in rule that if an operation fails to comply with any applicable public notice and hearing requirements, CCR may deny the operation an amendment to provide treatment services to children with emotional disorders in accordance with HRC Chapter 42, Subchapter H, which was added by S.B. 781.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.273 (1) clarifies that a GRO must meet public notice and hearing requirements if it requests to amend its permit to relocate permanently to a location in a county with a population of less than 300,000, where the operation did not meet the public notice and hearing requirements with respect to its current location; (2) clarifies that a GRO must meet public notice and hearing requirements if it requests to amend its permit to relocate permanently to a location in the same county with a population of less than 300,000, if the location is in a different community or is served by a different school district; and (3) reorganizes the content of the standard for clarity.

The proposed amendment to §745.275 clarifies language to support the changes made to §745.273.

The proposed amendment to §745.277 indicates that if an operation fails to comply with the public notice and hearing requirements, CCR may deny the operation an amendment that would allow the operation to operate at the new location or to provide treatment services to children with emotional disorders.



The proposed amendment to §745.435 (1) expands the rule's applicability to all licensed or certified operations; (2) provides time frames for operations to notify CCR of any plans to permanently relocate; (3) clarifies that public notice and hearing requirements, if applicable, must be met in addition to minimum standards before CCR will amend the permit to reflect the new address; (4) moves some requirements to a new subsection for readability; and (5) adds a subsection to cross reference two minimum standards that provide information regarding a temporary relocation of a residential child-care facility during a declared disaster.

#### 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 increase the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

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

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; (3) are amended to reduce the burden or responsibilities imposed on regulated persons by the rules; and (4) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) increased compliance with statutory requirements; (2) more flexibility for an operation that permanently changes location;

and (3) increased accountability for an operation that permanently changes location because the permit number will no longer change as a result of the move.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur economic costs.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at [Ryan.Malsbary@hhs.texas.gov](mailto:Ryan.Malsbary@hhs.texas.gov).

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto: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 22R006" in the subject line.

### SUBCHAPTER D. APPLICATION PROCESS DIVISION 4. PUBLIC NOTICE AND HEARING REQUIREMENTS FOR RESIDENTIAL CHILD-CARE OPERATIONS

#### 26 TAC §§745.273, 745.275, 745.277

#### 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, §42.048, and Chapter 42, Subchapter H.

§745.273. *Which residential child-care operations must meet the public notice and hearing requirements?*

(a) Except as specified in subsection (c) [(b)] of this section, a [the following] general residential operation [operations] located in a county with a population of less than 300,000 must meet the public notice and hearing requirements when applying for a license. [;]

[(1) Any general residential operation applying for a license;]

~~[(2) Any general residential operation requesting to amend its permit to increase capacity; and]~~

~~[(3) A general residential operation that does not currently provide treatment services to children with emotional disorders but is requesting to amend its permit to begin providing treatment services to children with emotional disorders.]~~

(b) Except as specified in subsection (c) of this section, a general residential operation requesting to amend its permit must meet the public notice and hearing requirements if it is:

(1) An operation located in a county with a population of less than 300,000 requesting to increase capacity;

(2) An operation requesting to relocate permanently to a location in:

(A) a county with a population of less than 300,000 where the operation did not meet the public notice and hearing requirements with respect to its current location; or

(B) the same county with a population of less than 300,000 if the location is in a different community or is served by a different school district; or

(3) An operation located in a county with a population of less than 300,000 that does not currently provide treatment services to children with emotional disorders but is requesting to amend its permit to begin providing treatment services to children with emotional disorders.

(c) [(b)] A general residential operation that applies to provide services under Chapter 748 of this title, Subchapter V (relating to Additional Requirements for Operations that Provide Trafficking Victim Services) is exempt from any public notice and hearing requirements in subsection (a) of this section, unless the general residential operation intends to provide or provides treatment services to children with emotional disorders.

(d) [(e)] Notwithstanding the exemption provided in subsection (c) [(b)] of this section, if the operation never provides or ceases to provide trafficking victim services, then the operation must meet the public notice and hearing requirements. To meet public notice and hearing requirements, the operation may need to surrender its permit or withdraw its application, as applicable, and reapply.

*§745.275. What are the specific requirements for a public notice and hearing?*

(a) The following chart lists the public notice, hearing requirements, and subsequent report you must complete:  
Figure: 26 TAC §745.275(a)

(b) During an active declaration of a state of disaster under Texas Government Code, Chapter 418, public hearings concerning an operation located in an area subject to the declaration of disaster may be held in a manner that allows remote participation.

*§745.277. What will happen if I fail to comply with the public notice and hearing requirements?*

If you fail to comply with any one of the public notice and hearing requirements that are set forth under §745.273 of this division (relating to Which residential child-care operations must meet the public notice and hearing requirements?) and §745.275 of this division (relating to What are the specific requirements for a public notice and hearing?), we may do the following:

(1) Deny you a permit; ~~[or]~~

(2) Deny you an amendment to your permit that would allow you to increase capacity;

(3) Deny you an amendment to your permit that would allow you to operate at the new location; or

(4) Deny you an amendment to your permit that would allow you to provide treatment services to children with emotional disorders.

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 July 6, 2022.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 21, 2022

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



## DIVISION 10. RELOCATION OF OPERATION

### 26 TAC §745.435

#### 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, §42.048, and Chapter 42, Subchapter H.

*§745.435. What must I do if I relocate my operation after I receive my license or certification?*

(a) If [A change in location automatically revokes your license or certification unless your license or certification is for:]

~~[(1) A child-placing agency; or]~~

~~[(2) A school-age program that operates exclusively during the summer or any other time school is not in session.]~~

[(b) For all licenses and certifications, other than those exempted in subsection (a) of this section, if] you are going to relocate your operation permanently to a new location [for any reason], you must notify us as early as possible before the move and meet the notification requirements in the following table [to voluntarily relinquish your permit. You may reapply for a permit to operate at your new location. See Division 3 of this subchapter (relating to Submitting the Application Materials)].

Figure: 26 TAC §745.435(a)

(b) If you fail to notify us before you relocate, we may deny you an amendment to your [a] permit that would allow you to operate at [for] the new location.

(c) [If you are going to relocate your child-placing agency or your school-age program that operates exclusively during the summer or any other time school is not in session, you must notify us of the move no later than 15 days prior to the move.] You must notify us of the address of your new location by completing [complete] a form that we

provide you. After we [provided by us showing your new address. We will] inspect your new location, we will amend your permit to reflect the new address if: [-]

(1) The [If the] new location complies with the minimum standards; and

(2) You meet the requirements in Division 4 of this subchapter (relating to Public Notice and Hearing Requirements for Residential Child-Care Operations), if applicable [; we will amend the permit to reflect the new address].

(d) If we amend your permit to reflect a new address as described in subsection (c) of this section:

(1) The issuance date that is on your original permit will remain in effect; and [-]

(2) There is no additional fee for your change in location.

(e) For temporary re-location of a residential child-care facility during a declared disaster, see §748.303(e)(3) of this title (relating to When must I report and document a serious incident?) and §749.503(e)(3) of this title (relating to When must I report and document a serious incident?).

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 July 6, 2022.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 21, 2022

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 amendments to §748.153 and §748.303 in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement sections of statute that were amended by Senate Bill (S.B.) 225 and S.B. 863, 87th Texas Legislature, Regular Session, 2021.

S.B. 225, SECTIONS 5 and 9, amended Texas Human Resources Code (HRC) §42.048(e) and §42.048(e-3) to (1) delete the requirement that a license or certificate is automatically revoked when certain operations change location (although HRC §42.048 only explicitly applies to licensed operations, this provision also applies to certified operations by way of HRC §42.052(b)); (2) require the operation to inform HHSC Child Care Regulation (CCR) of the new location before moving there; and (3) allow the operation to operate at the new location after CCR approves the location as meeting all relevant requirements.

S.B. 225 took effect on September 1, 2021, and applies to the following operation types that may now change location without

their license or certification being automatically revoked: (1) all school-age programs, regardless of when they operate; (2) before or after-school programs; (3) licensed child-care homes; (4) child-care centers; and 5) general residential operations (GROs).

S.B. 863 took effect on May 15, 2021, and amended HRC §42.048 to allow CCR to comply with a local or state order during a declared disaster (as described in Texas Government Code Chapter 418) by authorizing a licensed or certified residential child-care facility to temporarily (1) move to a new location not on the facility's license application; or (2) provide care for one or more children at an additional location that is not stated in the facility's license application.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.153 adds a cross reference to §745.435 of the same title (relating to What must I do if I relocate my operation after I receive my license or certification?).

The proposed amendment to §748.303 adds new subsection (e)(3) to require a GRO to notify CCR and parents as soon as possible, but no later than 24 hours after temporarily moving to or providing care at any location not noted on the operation's permit, renumbers the rule accordingly, and adds a clarification in subsection (e)(11).

### 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 increase the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

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

### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; (3) are amended to reduce the burden or responsibilities imposed on regulated persons by the rules; and (4) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) increased compliance with statutory requirements; (2) more flexibility for an operation that changes location; (3) increased accountability for an operation that permanently changes location because the permit number will no longer change as a result of the move; and (4) more options for an operation needing to temporarily relocate during a disaster.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur economic costs.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at [Ryan.Malsbary@hhs.texas.gov](mailto:Ryan.Malsbary@hhs.texas.gov).

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto: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 22R006" in the subject line.

### SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

#### DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

##### 26 TAC §748.153

#### 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 and §42.048.

§748.153. *What changes must I notify Licensing about regarding my operation?*

You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your operation or your governing body, if applicable;

(B) Move your operation to another location as required in §745.435 of this title (relating to What must I do if I relocate my operation after I receive my license or certification?); or

(C) Change your operating hours;

(2) As soon as possible, but at least 15 days before:

(A) You make changes to the policies and procedures required in §748.103(b) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(B) Changes are made to the operation's floor plan showing the dimensions and the purpose of all rooms and specifying where children and caregivers, if applicable, will sleep; and

(C) Construction begins on adding a swimming pool or other permanent body of water;

(3) As soon as possible, but no later than two days after:

(A) You change your child-care administrator;

(B) A new individual becomes a controlling person at your operation;

(C) An individual ceases to be a controlling person at your operation; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) Within 24 hours of the child's placement, if you provide emergency care services and exceed capacity according to §748.155(b) of this title (relating to May I exceed my operation's 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 July 6, 2022.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 21, 2022

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



### SUBCHAPTER D. REPORTS AND RECORD KEEPING

## DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

### 26 TAC §748.303

#### 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 and §42.048.

*§748.303. When must I report and document a serious incident?*

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 26 TAC §748.303(a)

Figure: 26 TAC §748.303(a)

(b) If there is a medically pertinent incident that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §748.311 of this division (relating to How must I document a serious incident?).

(c) If the child returns before the required reporting timeframe outlined in subsection (a)(8) - (10) of this section, you are not required to report the absence as a serious incident. Instead, you must document within 24 hours after you become aware of the unauthorized absence in the same manner as for a serious incident, as described in §748.311 of this division.

(d) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement, if there is a fatality;

(2) The parent, if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(e) You must report and document the following types of serious incidents involving your operation, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified time frames:

Figure: 26 TAC §748.303(e)

[Figure: 26 TAC §748.303(e)]

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  
Earliest possible date of adoption: August 21, 2022  
For further information, please call: (512) 438-3269

## CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§749.153, 749.503, and 749.2551 in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

#### BACKGROUND AND PURPOSE

The main purpose of the proposal is to implement sections of statute that were amended by Senate Bill (S.B.) 225 and S.B. 863, 87th Texas Legislature, Regular Session, 2021.

S.B. 225, SECTIONS 5 and 9, amended Texas Human Resources Code (HRC) §42.048(e) and §42.048(e-3) to (1) delete the requirement that a license or certificate is automatically revoked when certain operations change location (although HRC §42.048 only explicitly applies to licensed operations, this provision also applies to certified operations by way of HRC §42.052(b)); (2) require the operation to inform HHSC Child Care Regulation (CCR) of the new location before moving there; and (3) allow the operation to operate at the new location after CCR approves the location as meeting all relevant requirements.

S.B. 225 took effect on September 1, 2021, and applies to the following operation types that may now change location without their license or certification being automatically revoked: (1) all school-age programs, regardless of when they operate; (2) before or after-school programs; (3) licensed child-care homes; (4) child-care centers; and (5) general residential operations (GROs). Child-placing agencies (CPAs) were able to change location without to the statutory changes made by S.B. 225. However, the bill repealed the subsection that explicitly addressed CPAs, so CCR is aligning requirements for CPAs with those for other licensed or certified operation types for consistency.

S.B. 863 amended HRC §42.048 to allow CCR to comply with a local or state order during a declared disaster (as described in Texas Government Code Chapter 418) by authorizing a licensed or certified residential child-care facility to temporarily (1) move to a new location not on the facility's license application; or (2) provide care for one or more children at an additional location that is not stated in the facility's license application.

S.B. 863 took effect on May 15, 2021, and applies to GROs and CPAs. However, temporary relocation of children in foster homes will also be addressed to be consistent with the bill's requirements for CPAs, which are tasked with overseeing foster homes.

Another purpose of the proposal is to align foster home capacity requirements related to 42 U.S.C. §671(a), which includes requirements that a state must meet in order to have a federally approved IV-E plan.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §749.153 adds a cross reference to §745.435 of the same title (relating to What must I do if I relocate my operation after I receive my license or certification?) and corrects citations for references within the same chapter.

The proposed amendments to §749.503 make edits to improve consistency and readability, update numbering and a citation, and add new subsection (e)(3) to require a CPA to notify CCR and parents as soon as possible, but no later than 24 hours after the following situations have occurred due to a declared state of disaster: (1) the CPA temporarily moves to a new location that is not noted on the CPA's permit; (2) a foster home temporarily moves to a new location that is not noted on the verification; or (3) a foster home temporarily provides care to one or more children at any location not noted on the verification.

The proposed amendments to §749.2551 delete subsections (b)(1)(C) and (d) in order to assist Texas in meeting requirements for a federally approved IV-E plan. These requirements are codified in 42 U.S.C. §672. Presently, §749.2551(b)(1)(C) allows a CPA to expand a foster home's capacity to more than six children due to a natural disaster; federal requirements do not allow an expansion of a foster home's capacity for this reason. Moreover, §749.2551(d) presently allows a CPA to request an exception for a foster family home to care for seven or eight children by using the process for requesting a waiver or variance; federal requirements only allow a waiver of a non-safety standard in a relative foster family home. The deletion of both subsections will help ensure that Texas meets IV-E requirements.

#### 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, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$62,764 in fiscal year (FY) 2023, \$0 in FY 2024, \$0 in FY 2025, \$0 in FY 2026, and \$0 in FY 2027. The one-time cost to the state relates to the information technology (IT) changes that are needed to CCR's internal database to allow temporary relocations to be documented for CPA branch offices. This allowance already exists for CPA main offices and foster homes in CCR's internal database, so the IT changes would allow CPA branch offices to have this functionality as well.

#### 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 increase the number of individuals subject to the rules; and

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

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

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

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; (3) are amended to reduce the burden or responsibilities imposed on regulated persons by the rules; and (4) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) increased compliance with statutory requirements; (2) more flexibility for an operation that changes location; (3) increased accountability for an operation that permanently changes location because the permit number will no longer change as a result of the move; and (4) more options for an operation needing to temporarily relocate during a disaster.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur economic costs.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at [Ryan.Malsbary@hhs.texas.gov](mailto:Ryan.Malsbary@hhs.texas.gov).

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto: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 22R006" in the subject line.

## SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

### DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

#### 26 TAC §749.153

##### 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 affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042 and §42.048.

*§749.153. What changes must I notify Licensing about regarding my child-placing agency?*

(a) You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your agency or your governing body, if applicable;

(B) Move your agency to another location as required in §745.435 of this title (relating to What must I do if I relocate my operation after I receive my license or certification?);

(C) Open a branch office; or

(D) Change your agency's or a branch office's hours of operation;

(2) As soon as possible, but at least 15 days before you:

(A) Make changes to the plans required in §749.101(3) and (4) of this chapter [title] (relating to What plans must I submit for Licensing's approval as part of the application process?); or

(B) Make changes to the policies and procedures required in §749.103(b) of this chapter [title] (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(3) As soon as possible, but no later than two days after:

(A) You change your child-placing agency administrator;

(B) A new individual becomes a controlling person at your child-placing agency;

(C) An individual ceases to be a controlling person at your child-placing agency; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) About a foster home's verification status as described in §749.2489 of this chapter [title] (relating to [(c)]What information must I submit to Licensing about a foster home's verification status?).

(b) You must report to the Texas Abuse and Neglect Hotline as soon as you become aware of any foster or adoptive placements that

appear to have been made by someone other than the child's parents or a child-placing agency.

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 D. REPORTS AND RECORD KEEPING

### DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

#### 26 TAC §749.503

##### 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 and §42.048.

*§749.503. When must I report and document a serious incident?*

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified timeframes:

Figure: 26 TAC §749.503(a)

~~[Figure: 26 TAC §749.503(a)]~~

(b) If there is a medically pertinent incident that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §749.511 of this division (relating to How must I document a serious incident?).

(c) If a child returns before the required reporting timeframe outlined in subsection (a)(8) - (10) of this section, you are not required to report the absence as a serious incident. Instead, you must document within 24 hours after you become aware of the unauthorized absence in[]the same manner as for a serious incident, as described in §749.511 of this division.

(d) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement, if there is a fatality;

(2) The parent, if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(e) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:

Figure: 26 TAC §749.503(e)

[Figure: 26 TAC §749.503(e)]

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 July 6, 2022.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



## SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS DIVISION 5. CAPACITY AND CHILD/CARE- GIVER RATIO

### 26 TAC §749.2551

#### 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 and §42.048.

§749.2551. *What is the maximum number of children a foster family home may care for?*

(a) A one-parent foster family home with one additional full-time, live-in caregiver or a two-parent foster family home may care for up to six children, except as noted in the chart below:

Figure: 26 TAC §749.2551(a) (No change.)

(b) A one-parent foster family home with one additional full-time, live-in caregiver or a two-parent foster family home may care for seven or eight children if all of the following criteria are met:

(1) Each foster or adoptive child that you place in the home that expands the home's capacity to more than six children:

(A) Is part of a sibling group; or

(B) Has a prior relationship with the foster family, including a kinship (relative or close family friend) placement; [or]

[(C) Is being relocated due to a natural disaster;]

(2) The foster family home cares for a maximum of two infants and two more children less than six years old, unless the placement is necessary to maintain a sibling group of children;

(3) The foster family home cares for a maximum of three children with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children;

(4) You complete a Foster Family Home Capacity Exception Form with the appropriate signatures and place the form in the foster family home record; and

(5) After you complete the exception form, you lower the home's capacity each time a child listed on the form leaves the home until the home's capacity does not exceed six. This applies to both a foster child that leaves and a child who was placed in the home to be adopted leaves without the adoption being consummated.

(c) A one-parent foster family home or two-parent foster family home with one foster parent absent for extended periods of time (such as military service or out-of-town job assignments) may care for up to six children, except as noted in the chart below:

Figure: 26 TAC §749.2551(c) (No change.)

[(d) Notwithstanding subsections (a), (b), and (c) of this section, a child-placing agency may request an exception for a foster family home to care for seven or eight children by using the process for requesting a variance that is in 40 TAC Chapter 745, Subchapter J (relating to Waivers and Variances for Minimum Standards) and meeting the requirements of that subchapter. Licensing will make the decision to deny or grant an exception in accordance with factors listed in 40 TAC §745.8307 (relating to How does Licensing make the decision to grant or deny my waiver or variance request?).]

(d) [(e)] The maximum number of children that a foster family home may care for includes any biological and adopted children of the caregivers who live in the foster home, any children receiving foster or respite child-care, and any children for whom the family provides day care. All adults in care must also be counted in the capacity of the home as required by §749.2651(b) of this chapter [title] (relating to May a foster home accept adults into the home for care?).

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

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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 31. NATURAL RESOURCES AND CONSERVATION

### PART 1. GENERAL LAND OFFICE

#### CHAPTER 15. COASTAL AREA PLANNING

##### SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM



### 31 TAC §15.32

The General Land Office (GLO) proposes an amendment to 31 Texas Administrative Code (TAC) §15.32 relating to Certification Status of the Cameron County Dune Protection and Beach Access Plan (Plan) and Erosion Response Plan (ERP). Cameron County has proposed a minor amendment to its Plan and ERP to correct an error in the current versions of these documents. The GLO proposes to add new subsection §15.32(f) to certify the amended Plan and ERP as consistent with state law.

#### BACKGROUND OF THE PROPOSED AMENDMENTS

On June 21, 2022, the Cameron County Commissioner's Court approved a minor amendment to Section IV.A.6 of its Plan and to Section 5.3.1.(2)(i) of its ERP. The amendments were submitted to the GLO on July 1, 2022. As provided in 31 TAC §15.3(o), the GLO must grant or deny certification of an ERP or amendments to local government dune protection and beach access plans. The GLO finds that these amendments are consistent with state law.

The sections of the Plan and the ERP Cameron County proposes to amend were previously certified as a variance from 31 TAC §15.5(b)(3) and §15.6(f)(3) to allow minimal impervious cover outside the footprint of a habitable structure in eroding areas, using concrete or another impervious surface for specific purposes so long as its area does not exceed 5% of the footprint of the habitable structure. Since Cameron County is one of the windiest and driest areas along the Texas coast, increased sediment transport of sand means that stabilization of pervious materials as listed in the ERP may necessitate concrete curbs. The current version of the Plan and ERP specify that the curbs must be no wider than six inches and no more than ten inches high. However, it is now evident that curb manufacturing industry standards indicate a height limit of twelve inches, not ten inches. The industry-standard size for manufactured curbs is six inches wide and twelve inches high, not six inches wide and ten inches high. The current ten-inch limit was in error and should have been twelve inches. As a result, Cameron County is now proposing amendments to correct the error, which appears in the Plan and the ERP. The GLO previously found that the dry environment coupled with the enhanced protective standards adopted in the ERP ensure the variance is as protective as current rules since the allowances have appropriately limited the authorized uses, and the percentage of impervious surfaces allowed, and does not include allowances for any slabs. The increase in height limit by two inches does not change GLO's analysis or conclusion.

#### FISCAL AND EMPLOYMENT IMPACTS

Ms. Melissa Porter, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government as a result of enforcing or administering the amended rule. Ms. Porter has determined that the proposed amendment will save money since curbs made to industry-standard size are less expensive than curbs made to a custom size. Ms. Porter has also determined that for each year of the first five years the proposed amendments are in effect, there will be no impacts to the local economy.

Ms. Porter has determined that there will be no fiscal implications to the local government or additional costs of compliance for large and small businesses or individuals resulting from the proposed amendment to the Plan and ERP. GLO has determined that the proposed rulemaking will have no adverse local employ-

ment and that no impact statement is required pursuant to Texas Government Code §2001.022.

#### PUBLIC BENEFIT

Ms. Porter has determined that the public will benefit from the proposed amendment since the use of industry-standard size curbs costs less than custom-made curbs. The difference in size between the six by ten-inch curbs and the six by twelve-inch curbs is minimal, and the previous analysis of public benefit has not changed because of it.

#### ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under Texas Natural Resources Code §§61.011, 61.015(b), 61.070, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and have access to public beaches, and certification of local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

#### TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution.

The GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed rule simply certifies the amendments to Cameron County's Dune Protection and Beach Access Plan (Plan), it will not affect the operations of the General Land Office. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The

proposed rule amendments do not create, limit, or repeal existing agency regulations, but rather certify the amendments to the Plan and ERP as consistent with state law. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed amendments would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety and to reduce public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life.

#### CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and §505.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determined that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

#### PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register, Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to [walter.talley@glo.texas.gov](mailto:walter.talley@glo.texas.gov). Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §§61.011, 61.015(b), and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, and 63.121 are affected by the proposed amendments.

*§15.32. Certification Status of Cameron County Dune Protection and Beach Access Plan.*

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

(f) The General Land Office certifies as consistent with state law the Cameron County's Dune Protection and Beach Access Plan and Erosion Response Plan, as amended to include corrected size limits for curbs. The amendments were adopted by the Cameron County Commissioners' Court on June 21, 2022.

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 July 11, 2022.

TRD-202202586

Mark Havens

Deputy Land Commissioner and Chief Clerk  
General Land Office

Earliest possible date of adoption: August 21, 2022

For further information, please call: (512) 475-1859

## PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

### CHAPTER 53. FINANCE

#### SUBCHAPTER G. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

##### 31 TAC §53.113

The Texas Parks and Wildlife Department proposes the repeal of 31 TAC §53.113, concerning Refusal to Issue or Renew License; Review of Agency Decision to Refuse or Renew License.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

In another proposed rulemaking published elsewhere in this edition of the *Texas Register*, the department would establish a uniform process for decisions to refuse issuance or renewal of licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The proposed repeal would eliminate the current rule governing agency decisions to refuse permit issuance or renewal of licenses for marine dealers, distributors, and manufacturers.

Robert MacDonald, Regulations Coordinator, has determined that for each of the first five years that the repeal as proposed is in effect, there will be no fiscal implications to state or local government as a result of administering the repeal.

There will be no effect on persons required to comply with the repeal as proposed.

Mr. MacDonald also has determined that for each of the first five years that the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal will be compliance with the establishment of a uniform process for an informal review of a department decision to refuse to issue or renew all nonrecreational permits or licenses identified by the Sunset Advisory Commission for which a statutorily created review process is not provided.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse eco-

conomic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed repeal has no effect on small businesses, micro-businesses, or rural communities. On this basis, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the repeal as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed repeal.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed repeal.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The repeal as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed repeal may be submitted to Allison Winney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560; email: allison.winney@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The repeal is proposed under Parks and Wildlife Code, §31.0412, which authorizes the commission to adopt rules regarding licenses issued under Parks and Wildlife Code, §31.041, including rules regarding application and renewal procedures.

The proposed repeal affects Parks and Wildlife Code, Chapter 31.

§53.113. *Refusal to Issue or Renew License; Review of Agency Decision to Refuse or Renew License.*

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

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TRD-202202589

James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
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For further information, please call: (512) 389-4775

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**CHAPTER 55. LAW ENFORCEMENT**

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §55.404, concerning Party Boat Operator License--General Provisions, and §55.653, concerning Controlled Exotic Snakes.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

In another proposed rulemaking published elsewhere in this edition of the *Texas Register*, the department would establish a uniform process for decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The proposed amendments would eliminate the current rules governing agency decisions to refuse permit issuance or renewal of licenses for holders of party boat operators licenses and holders of controlled exotic snake permits.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of administering the rules.

There will be no effect on persons required to comply with the rules as proposed.

Public Benefit/Cost Note.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the establishment of a uniform process for an informal review of a department decision to refuse to issue or renew all nonrecreational permits or licenses identified by the Sunset Advisory Commission for which a statutorily created review process is not provided.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses

and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rules have no effect on small businesses, micro-businesses, or rural communities. On this basis, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Allison Winney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560; email: allison.winney@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

## SUBCHAPTER H. PARTY BOATS

### 31 TAC §55.404

The amendment is proposed under Parks and Wildlife Code, §31.180, which authorizes the commission to promulgate rules necessary to implement Parks and Wildlife Code, Chapter 31, Subchapter G.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§55.404. *Party Boat Operator License--General Provisions.*

(a) - (d) (No change.)

{(e) Refusal to Issue or Renew License; Review of Agency Decision to Refuse or Renew License.}

{(1) The department may refuse to issue or renew a license under this subchapter if:}

{(A) an applicant is liable to the state under Parks and Wildlife Code §12.301;}

{(B) an applicant has a final conviction or has been assessed an administrative penalty for a violation of:}

{(i) Parks and Wildlife Code, Chapter 31, involving reckless or negligent behavior, or behavior that placed passengers in peril.}

{(ii) a provision of the Parks and Wildlife Code that is punishable as a Parks and Wildlife Code;}

{(I) Class A or B misdemeanor;}

{(II) state jail felony; or}

{(III) felony;}

{(iii) a violation of Penal Code, Chapter 49 involving the operation of a motorboat;}

{(iv) a violation of Water Code, §26.121; or}

{(v) any federal or state law relating to the sale, distribution, financing, registration, or taxing of a vessel, motorboat, or outboard motor; or}

{(C) the department has evidence that the applicant is acting on behalf of or as a surrogate for another person or entity who has a final conviction or has been assessed an administrative penalty for any violation listed in this subsection.}

{(2) The department will not issue a party boat operator license to a person who is prohibited from holding an equivalent license in another state.}

{(3) In determining whether to issue or renew a license under this section, the department may consider:}

{(A) the number of final convictions or administrative penalties;}

{(B) the seriousness of the conduct on which the final conviction or administrative penalty is based;}

{(C) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by paragraph (1) of this subsection;}

{(D) the length of time between the most recent final conviction or administrative penalty and the license application;}

{(E) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;}

{(F) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both; and}

{(G) other mitigating factors.}

{(4) The department shall provide to the applicant a written statement of the reasons for a decision to deny the issuance or renewal of a license.}

{(5) An applicant may request a review of a decision of the department with respect to license issuance or denial. The request for review must be made within 30 days of being notified by the department that the application for a license or license renewal has been denied. The review request must be in writing and addressed to: Marine Enforcement, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, TX 78744. If no review request is received within 30 days of the date of the letter notifying the licensee of the department's intent to refuse issuance or renewal of the license, the decision to deny the issuance or renewal of a license is final.}

[(A) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.]

[(B) The department shall conduct the review within 30 days of receipt of the request required by subparagraph (A) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.]

[(C) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with knowledge in marine regulations, appointed or approved by the executive director or his or her designee.]

[(D) The decision of the review panel is final.]

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## SUBCHAPTER J. CONTROLLED EXOTIC SNAKES

### 31 TAC §55.653

The amendment is proposed under Parks and Wildlife Code, §43.855, which authorizes the commission to adopt rules to implement Parks and Wildlife Code, Chapter 43, Subchapter V, including rules to govern permit application forms, fees, and procedures.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§55.653. *Permit Issuance and Period of Validity.*

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

[(d) A person convicted of a violation of this subchapter may not obtain a permit before the fifth anniversary of the date of the conviction.]

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## CHAPTER 56. AGENCY DECISION TO REFUSE LICENSE OR PERMIT ISSUANCE

## OR RENEWAL AND AGENCY DECISION TO SUSPEND OR REVOKE AFFECTED LICENSE OR PERMIT

### 31 TAC §§56.1 - 56.7

The Texas Parks and Wildlife Department proposes new 31 TAC §§56.1 - 56.7, concerning Agency Decision to Refuse License or Permit Issuance or Renewal and Agency Decision to Suspend or Revoke Affected License or Permit. The proposed new rules would constitute new Chapter 56 and would establish a uniform process governing department decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute and prescribe a similar process regarding agency decisions to suspend or revoke a license or permit affected by the proposed new subchapter.

Under Government Code, Chapter 325, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if a public need exists for the continuation of a state agency and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until September 1, 2033. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

Proposed new §56.1, concerning Definitions, would create unambiguous meanings for specialized words and terms used in the rules. "Applicant" would be defined as "a person who seeks to obtain a license or permit issued by the department." The definition is necessary to make clear that an applicant is a person who seeks to obtain a license or permit generally, whether initial permit or license issuance or renewal. "Final conviction" would be defined as "a final judgment of guilt, the granting of deferred adjudication or pretrial diversion, or the entering of a plea of guilty or nolo contendere." The definition is necessary to make explicit the various juridical outcomes upon which the processes described in the rules are predicated. "License or Permit" would be defined as "a non-recreational license or permit issued by the department, including but not limited to the licenses and permits listed in §56.7 of this title," which is necessary to identify the specific licenses and permits to which the rules apply, and to definitively exclude licenses and permits for which the process of denying permit or license issuance or referral is wholly or partially prescribed by statute.

Proposed new §56.2, concerning Refusal to Issue or Renew Permit or License, would identify the specific types of criminal conduct to be considered by the department in determining whether to issue or renew a permit or license. The department believes that a decision to issue or renew a license or permit should take into account the applicant's history of violations involving the possession of live animals; the commercial exploitation of public wildlife and fisheries resources; major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies); specific provisions of the Penal Code involving falsification of governmental records and animal cruelty; and federal laws applicable to conduct regarding unlawful wildlife trafficking or violations of federal airborne hunting laws.

The department reasons that it is appropriate to deny the privilege of possessing live wildlife or engaging in the commercial exploitation of a public wildlife resource to persons who exhibit a demonstrable disregard for the statutes and regulations governing such activities. Similarly, it is appropriate to deny such privileges to a person who has exhibited demonstrable disregard for fish and wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law. The department also believes that persons with a criminal history of disregard for honesty or truthfulness with respect to furnishing information required by law in applications, reports, or communications involving governmental records should be prevented from the privilege of possessing or benefiting from wildlife resources. The department is the primary state agency responsible for managing, protecting, and conserving public wildlife and fisheries resources and is statutorily authorized or required to issue a wide variety of permits and licenses for many purposes, including, variously, the take, possession, use, propagation, importation, exportation, purchase, sale, etc., of those resources. As discussed elsewhere in this preamble, the department believes that unscrupulous persons and persons known to exhibit disregard for the law should not enjoy the privileges of exploitation of a public trust resource because their behavior is evidence that they cannot be expected to discharge the responsibilities, requirements, and expectations attendant to such privileges. One example and indication of unscrupulous character is the lack of fidelity to the truth with respect to providing information required by the department to effectively assess and determine a person's fitness to be allowed to exploit a public trust resource. The department reasons that a person who is untruthful in furnishing information to the department, in addition to committing the criminal offense of falsification of a government record, will be similarly indisposed to faithfully follow and discharge the requirements of a permit or license to exploit a public trust. The department similarly believes that persons who have been convicted of animal cruelty should not be allowed to possess or benefit from the possession or use of wildlife resources. Animal cruelty is the intentional or reckless disregard for animal welfare that results in unwarranted or unjustified pain or suffering and includes torture, poisoning, killing, causing serious injury, failure to provide necessary food, water, care, or shelter, abandonment, and other, similar, types of abuse. The department reasons that persons with a demonstrable history of either failure to care for animals in that person's custody or the opportunistic infliction of pain and suffering on animals cannot be entrusted with a permit or license to possess live wildlife resources and should not be able to benefit from any other activity that involves the take and use of live wildlife resources. Therefore, the proposed new rule would specify that the department may refuse permit or renewal issuance to persons who have been finally convicted of or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C (Permits for Scientific Research, Zoological Collection, Rehabilitation, and Educational Display), E (Permits for Trapping, Transporting and Transplanting Game Animals and Game Birds), G (Permits to Manage Wildlife and Exotic Animals from Aircraft), L (Deer Breeder's Permit), or R (Deer Management Permit - White-tailed Deer) or R-1 (Deer Management Permit - Mule Deer); violations of the Parks and Wildlife Code or rules of the commission that are Class A or B misdemeanors, felonies or state jail felonies; violations of Parks and Wildlife Code, §63.002 (which although a Class C misdemeanor, specifically addresses the unlawful possession of live game animals); Penal Code, §37.10 (Tampering with Govern-

mental Record); Penal Code, §42.092 (Cruelty to Nonlivestock Animals); the federal Lacey Act; the federal Airborne Hunting Act; or any statutory or regulatory provision involving conduct or behavior regulated by the permit or license the applicant seeks to obtain or renew.

The Lacey Act (16 U.S.C. §§3371 - 3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. The department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for denial of a license or permit subject to the provisions of the proposed rule.

The proposed new rule also would allow the department to refuse permit or license issuance or renewal for any statutory or regulatory provision not described in subsection (a)(1)-(6) that involves conduct or behavior regulated by the permit or license the applicant seeks to obtain or renew. The proposed new rule would set forth the criteria to be used in determining whether a criminal conviction directly relates to the duties and responsibilities required under a permit or license sought by an applicant, including the relationship of the crime to the purposes for which a license or permit listed in §56.5 of this title is required; the extent to which the issuance of a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities under the license or permit being sought; and any correlation between the elements of the crime and the duties and responsibilities of the license or permit being sought.

In addition to providing for the possible refusal to issue or renew a license or permit on the basis of criminal conduct, the proposed new rule would provide for the ability of the department to deny license or permit issuance or renewal on the basis of noncompliance with applicable administrative provisions. Virtually all of the licenses and permits affected by the proposed new rules require some form of administrative process and oversight, including application processes, the payment of fees, and reporting and/or notification requirements. The application process is used by the department to ensure that a prospective permittee or licensee is qualified to and/or capable of enjoying the privileges of the license or permit. The information contained in reports and notifications is used by the department for a variety of oversight and management purposes, including as a measure to determine regulatory compliance during the period of validity of the permit or license. Therefore, proposed new subsection (b) would provide that the department may refuse to issue or renew a permit or license if an applicant fails to submit a completed application (including all application materials required by the department), the required fee, accurate required reports or notifications, and any additional information or material the department determines necessary to process the application.

Proposed new subsection (c) would provide for denial of permit or license issuance or renewal on the basis of outstanding debt owed to the department by the applicant. The department is the regulatory authority for a wide variety of programs and activities, including hunting, recreational fishing, commercial fishing, operation of the state parks system, water safety, boat and motor titling, environmental protection and much more. Most regulated entities and activities are subject to fees of various kinds, and criminal violations can result in fines. Under Parks and Wildlife

Code, §12.301, a person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of the Parks and Wildlife Code or regulation of the department is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured. Such payments are commonly referred to as "civil restitution." The department believes that it is entirely reasonable to deny permit or license issuance or renewal to any applicant who is indebted to the department, including those who have failed to remit required payments to the department as civil restitution for violation of conservation law.

Proposed new subsection (d) would establish the criteria used by the department to guide a decision to refuse permit or license issuance or renewal. The department does not intend for denial of permit or license issuance or renewal to be either automatic or permanent; accordingly, the proposed new section would establish a matrix of various factors to be considered when making a determination to deny permit or license issuance or renewal. Those factors include the extent and nature of the person's past criminal activity with respect to the factors identified, the age of the person when the crime was committed, the amount of time that has elapsed since the person's last criminal activity involving factors identified in this section, the conduct and work activity of the person before and after the criminal activity, evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision, other evidence of the person's fitness, including letters of recommendation; and any other adverse or mitigating factors, including the number of final convictions or administrative penalties; the seriousness of the conduct on which the final conviction or administrative penalty is based; the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty; the length of time between the most recent final conviction or administrative penalty and the permit or license application; whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct; whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of the permit or license history information provided by the applicant; whether the applicant for a permit or license renewal agreed to any special provisions recommended by the department as conditions to the expiring permit.

Proposed new §56.3, concerning Subpermittees, Volunteers, Agents, and Surrogates, would address the various peripheral roles of persons other than the permittee or licensee who are authorized to engage in activities authorized under a permit or license. In many cases, authorized activities are conducted by other persons in addition to the permittee. The department believes that, in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense that otherwise is a reason for license or permit denial from assisting in activities involving live animals or that are conducted for the personal benefit of the permittee or licensee. The proposed new provision is necessary to prevent unscrupulous persons from circumventing the intent of the department (that they not engage in an activity for which they are prohibited from obtaining a license or permit to conduct) by using another person to obtain a permit with the objective of continuing to do business as usual in the name of the shadow permittee.

Proposed new §56.4, concerning Review of Agency Decision to Deny Issuance or Renewal of License or Permit, would create a review process for department decisions concerning the issuance and renewal of licenses and permits. The proposed new rule is necessary to create a process to allow persons who have been denied issuance of permits or permit renewals to have the decision reviewed by a panel of senior department managers. The process as proposed would allow the department to reverse such decisions upon further review.

Proposed new §56.5, concerning Revocation or Suspension of License or Permit, would prescribe the informal, internal process and criteria used by the department to revoke or suspend an affected permit or license. The proposed new section would utilize the same criteria enumerated in proposed new §56.2, concerning Refusal to Issue or Renew Permit of License, as the basis for pursuing revocation or suspension of an affected license or permit, and would employ the same process for making determinations. The department notes that the proposed new rule creates an informal internal administrative process that is in addition to but does not replace, negate, or supersede the provisions of Parks and Wildlife Code, Chapter 12, Subchapter F, which governs the revocation or suspension of all licenses or permits issued by the department.

Proposed new §56.6, concerning Review of Agency Decision to Seek Revocation or Suspension of a License or Permit, would create a review process for department decisions concerning revocation or suspension of affected licenses or permits. The proposed new rule is necessary to create a process to allow persons whom the department has determined should have an affected license or permit revoked or suspended to have the decision reviewed by a panel of senior department managers. The proposed new rule is substantively identical to proposed new §56.4, concerning Review of Agency Decision to Deny Issuance or Renewal of License or Permit. The department notes that the proposed new rule creates an informal internal administrative process that is in addition to but does not replace, negate, or supersede the provisions of Parks and Wildlife Code, Chapter 12, Subchapter F, which governs the revocation or suspension of all licenses or permits issued by the department.

Proposed new §56.7, concerning Permits and Licenses Affected, would list the specific licenses and permits identified by the Sunset Advisory Commission to which the proposed new rules apply.

Robert MacDonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to units of state or local governments as a result of administering the rules.

There will be no effect on persons required to comply with the rules as proposed, as the rules govern an agency process.

Mr. MacDonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the establishment of a uniform process for an informal review of a department decision to refuse to issue or renew nonrecreational permits or licenses identified by the Sunset Advisory Commission for which a statutorily created review process is not provided.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those

guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rules have no direct effect on small businesses, micro-businesses, or rural communities. On this basis, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Robert MacDonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; email: robert.macdonald@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The new rules are proposed under Parks and Wildlife Code, §12.001, which authorizes the department to collect and enforce the payment of all taxes, licenses, fines, and forfeitures due to the department; §12.508, which authorizes the department to refuse to issue or transfer an original or renewal license, permit, or tag if the applicant or transferee has been finally convicted of a violation under the Parks and Wildlife Code or rule adopted or a proclamation issued under the Parks and Wildlife Code; §31.0412, which authorizes the commission to adopt rules regarding licenses issued under Parks and Wildlife Code, §31.041, including rules regarding application and renewal procedures; §31.180, which authorizes the commission to promulgate rules necessary to implement Parks and Wildlife Code, Chapter 31, Subchapter G; §43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; §43.109, which authorizes the commission to make regulations governing management of wildlife or exotic animals by the use of aircraft; Chapter 43, Subchapter F, which authorizes the commission to adopt regulations necessary to admin-

ister that subchapter; Chapter 43, Subchapter H, which authorizes the commission to adopt rules to implement that subchapter; §43.855, which authorizes the commission to adopt rules to implement Parks and Wildlife Code, Chapter 43, Subchapter V, including rules to govern permit application forms, fees, and procedures; Chapter 44, which provides for the applicability of all laws and regulations of the state to game animals held under a game breeder's license; Chapter 49, which authorizes the commission to prescribe eligibility requirements and fees for and issue any falconry, raptor propagation, or nonresident trapping permit; §65.003, which authorizes the commission to promulgate regulations to provide for permit application forms, fees, and procedures, and hearing procedures; §66.007, which authorizes the department shall make rules governing the issuance and use of permits to possess harmful or potentially exotic harmful fish, shellfish, and aquatic plants; Chapter 67, which authorizes the commission to establish any limitations on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; §71.002, which authorizes the commission to promulgate regulations to provide for permit application forms, fees, and procedures, and hearing procedures; Chapter 77, which authorizes the commission to regulate the catching, possession, purchase, and sale of shrimp; and Chapter 78, which authorizes the commission to regulate the taking, possession, purchase, and sale of mussels and clams.

The proposed new rules affect Parks and Wildlife Code, Chapters 12, 31, 43, 44, 49, 65, 67, 71, 77, and 78.

#### §56.1. Definitions.

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person who seeks to obtain a license or permit issued by the department.

(2) Final conviction--A final judgment of guilt, the granting of deferred adjudication or pretrial diversion, or the entering of a plea of guilty or nolo contendere.

(3) License or Permit--A non-recreational license or permit issued by the department, including but not limited to the licenses and permits listed in §56.7 of this title (relating to Permits and Licenses Affected).

#### §56.2. Refusal to Issue or Renew Permit or License.

(a) Criminal conduct. The department may refuse to issue or renew a license or permit to any person who has been finally convicted of or assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43, Subchapter C, E, G, L, R, or R-1;

(2) a provision of the Parks and Wildlife Code not described by paragraph (1) of this subsection that is a Parks and Wildlife Code:

(A) Class A or B misdemeanor;

(B) state jail felony; or

(C) felony;

(3) Parks and Wildlife Code, §63.002;

(4) Penal Code, §37.10 or §42.092;

(5) the Lacey Act (16 U.S.C. §§3371-3378);

(6) the Airborne Hunting Act (16 U.S.C. §742j-1); or



(7) any statutory or regulatory provision not described in this subsection involving conduct or behavior regulated by the permit or license the applicant seeks to obtain or renew. In determining whether a criminal conviction directly relates to the duties and responsibilities required under a permit or license sought by an applicant, the department shall consider each of the following factors:

(A) the relationship of the crime to the purposes for which a license or permit listed in §56.7 of this title (Relating to Permits and Licenses Affected) is required;

(B) the extent to which the issuance of a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(C) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities under the license or permit being sought; and

(D) any correlation between the elements of the crime and the duties and responsibilities of the license or permit being sought.

(b) Administrative compliance. The department may refuse to issue or renew a permit or license listed in §56.7 of this title if an applicant fails to submit in a timely manner any of the following:

(1) a completed application, including all application materials required by the department;

(2) the required fee;

(3) accurate required reports or notifications; or

(4) any additional information or material the department determines necessary to process the application.

(c) Outstanding liability to the department. The department may refuse to issue or renew a permit or license listed in §56.7 of this title, as applicable, if the applicant is liable to the state for fees or payment of penalties imposed pursuant to the Parks and Wildlife Code or commission rule, including liability under Parks and Wildlife Code, §12.301.

(d) Criteria for determination.

(1) If the department determines that a criminal conviction directly relates to the duties and responsibilities required under a permit or license, the department shall consider the following in determining whether to take an action authorized under this subchapter:

(A) the extent and nature of the person's past criminal activity with respect to the factors identified in this section;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity involving factors identified in this section;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision;

(G) other evidence of the person's fitness, including letters of recommendation; and

(H) other adverse or mitigating factors, including but not limited to:

(i) the number of final convictions or administrative penalties;

(ii) the seriousness of the conduct on which the final conviction or administrative penalty is based;

(iii) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by subsection (a) of this section;

(iv) the length of time between the most recent final conviction or administrative penalty and the permit application;

(v) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;

(vi) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both;

(vii) the accuracy of the permit history information provided by the applicant;

(viii) for a renewal, whether the applicant agreed to any special provisions recommended by the department as conditions to the expiring permit.

(2) A determination under this section is not permanent and the department shall consider the factors listed in this subsection in subsequent applications.

#### §56.3. Subpermittees, Volunteers, Agents, and Surrogates.

(a) The department may prohibit any person from engaging in activities regulated under a permit or license as a subpermittee, agent, or volunteer if that person is prohibited for any reason from obtaining the permit or license or from engaging in activities authorized by the permit or license.

(b) The department may refuse to issue or renew a permit or license for any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited for any reason from obtaining the permit or license or from engaging in activities authorized by the permit or license.

#### §56.4. Review of Agency Decision to Deny Issuance or Renewal of License or Permit.

(a) An applicant may request a review of a decision of the department to refuse issuance of a license or permit.

(1) An applicant seeking review of a decision of the department with respect to the issuance or renewal of a license or permit must submit a written request for the review within 10 working days of being notified by the department that the application has been denied.

(2) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(3) The department shall conduct the review within 30 working days of receipt of the request required by paragraph (1) of this subsection, unless another date is established in writing by mutual agreement between the department and the requestor.

(4) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the area or subject matter germane to the permit or license, appointed or approved by the executive director, or designee. The department employee that made the decision to refuse to issue or renew the license or permit shall not be a member of the review panel.

(5) The decision of the review panel is final.

(b) In conducting a review of a decision by the department to refuse to issue or renew a license or permit, the department shall consider:

(1) any applicable factors listed under §56.2(d) of this title (relating to Refusal to Issue or Renew Permit or License);

(2) the applicant's efforts toward rehabilitation;

(3) the likelihood that the applicant would repeat the conduct upon which the refusal is based;

(4) whether the conduct on which the refusal is based involved a threat to public safety; and

(5) other mitigating factors.

§56.5. Revocation or Suspension of Licenses of Affected License or Permit.

(a) Criminal conduct. The department may suspend or revoke a license or permit issued to any person who has been finally convicted of or assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43, Subchapter C, E, G, L, R, or R-1;

(2) a provision of the Parks and Wildlife Code not described by paragraph (1) of this subsection that is a Parks and Wildlife Code:

(A) Class A or B misdemeanor;

(B) state jail felony; or

(C) felony;

(3) Parks and Wildlife Code, §63.002;

(4) Penal Code, §37.10 or §42.092;

(5) the Lacey Act (16 U.S.C. §§3371-3378);

(6) the Airborne Hunting Act (16 U.S.C. §742j-1); or

(7) any statutory or regulatory provision not described in this subsection involving conduct or behavior regulated by the permit or license. In determining whether a criminal conviction directly relates to the duties and responsibilities required under a permit or license, the department shall consider each of the following factors:

(A) the relationship of the crime to the purposes for which a license or permit listed in §56.7 of this title (Relating to Permits and Licenses Affected) is required;

(B) the extent to which continued licensure or permit privileges might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(C) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities under the license or permit; and

(D) any correlation between the elements of the crime and the duties and responsibilities of the license or permit.

(b) Administrative compliance. The department may suspend or revoke a permit or license listed in §56.7 of this title if the licensee or permittee made a false or misleading statement in connection with the permittee's or licensee's original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees.

(c) Outstanding liability to the department. The department may suspend or revoke a permit or license listed in §56.7 of this title, as applicable, if the applicant is liable to the state for fees or payment of penalties imposed pursuant to the Parks and Wildlife Code or commission rule, including liability under Parks and Wildlife Code, §12.301.

(d) Criteria for determination.

(1) If the department determines that a criminal conviction directly relates to the duties and responsibilities required under a permit or license, the department shall consider the following in determining whether to take an action authorized under this section:

(A) the extent and nature of the person's past criminal activity with respect to the factors identified in this section;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity involving factors identified in this section;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision;

(G) other evidence of the person's fitness, including letters of recommendation; and

(H) other adverse or mitigating factors, including but not limited to:

(i) the number of final convictions or administrative penalties;

(ii) the seriousness of the conduct on which the final conviction or administrative penalty is based;

(iii) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by subsection (a) of this section;

(iv) the length of time between the most recent final conviction or administrative penalty and the permit application;

(v) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;

(vi) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both;

(vii) the accuracy of the permit history information provided by the applicant;

(viii) for a renewal, whether the applicant agreed to any special provisions recommended by the department as conditions to the expiring permit.

(2) A determination under this section is not permanent and the department shall consider the factors listed in this subsection in subsequent determinations.

§56.6. Review of Agency Decision to Seek Revocation or Suspension of a License or Permit.

(a) A licensee or permittee may request a review of a preliminary decision of the department to seek revocation or suspension of a license or permit.

(1) An applicant seeking review of a preliminary decision of the department with respect to the revocation or suspension of a license or permit must submit a written request for the review within 10 working days of being notified by the department of a preliminary decision to revoke or suspend a license or permit.

(2) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(3) The department shall conduct the review within 30 working days of receipt of the request required by paragraph (1) of this subsection, unless another date is established in writing by mutual agreement between the department and the requestor.

(4) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the area or subject matter germane to the permit or license, appointed or approved by the executive director, or designee. The department employee that made the decision to seek suspension or revocation of the license or permit shall not be a member of the review panel.

(5) A decision of the review panel to not seek revocation or suspension of a permit or license is final. A decision of the review panel to seek revocation or suspension of a permit or license is subject to the opportunity for a hearing provided in Parks and Wildlife Code §12.502.

(b) In conducting a review of a decision by the department to seek revocation or suspension of a permit or license, the department shall consider:

(1) any applicable factors listed under §56.5(d) of this title (relating to Revocation or Suspension of Licenses of Permit or License);

(2) the applicant's efforts toward rehabilitation;

(3) the likelihood that the applicant would repeat the conduct upon which the refusal is based;

(4) whether the conduct on which the refusal is based involved a threat to public safety; and

(5) other mitigating factors.

(c) The department may combine the notice of the department's preliminary decision to seek revocation or suspension of a license or permit with the notice of an opportunity for a hearing provided in Parks and Wildlife Code §12.502.

§56.7. Permits and Licenses Affected.

The provisions of this chapter apply to the following types of permits and licenses.

(1) Aerial Wildlife Management;

(2) Alligator - all;

(3) Bait Shrimp Dealer;

(4) Bait Dealer - all;

(5) CITES Tag Dealer - all;

(6) Commercial Fishing Boat - all;

(7) Commercial Mussel and Clam Fisherman - all;

(8) Commercial Nongame - all;

(9) Controlled Exotic Snake - all;

(10) Controlled Exotic Species - all;

(11) Depredation;

(12) Educational Display;

(13) Falconry - all;

(14) Finfish Import;

(15) Fish Dealer - all;

(16) Fishing Guide - all;

(17) Furbearing Animal - all;

(18) Game Animal Breeder;

(19) Game Bird Breeder - all;

(20) Hunting Cooperative - all;

(21) Marine Dealer, Distributor, or Manufacturer;

(22) Menhaden Boat - all;

(23) Nongame Fish;

(24) Party Boat Operator;

(25) Private Bird Hunting Area;

(26) Scientific Plant Research;

(27) Scientific Research;

(28) Shell Buyer - all;

(29) Shrimp Boat Captain - all;

(30) Shrimp Offloading;

(31) Wildlife Management Association Area Hunting Lease - all;

(32) Wildlife Rehabilitation; and

(33) Zoological.

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §57.124, concerning Refusal to Issue; Review of Agency Decision to Refuse Issuance, and §57.384, concerning Refusal to Issue; Review of Agency Decision to Refuse Issuance.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sun-

set Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

In another proposed rulemaking published elsewhere in this edition of the *Texas Register*, the department would establish a uniform process for decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The proposed amendments would eliminate the current rules governing agency decisions to refuse permit issuance or renewal of exotic aquatic species permits and permits to possess or sell nongame fish taken from public fresh waters. The proposed amendments would also retitle the affected sections accordingly.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of administering the rules.

There will be no effect on persons required to comply with the rules as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the establishment of a uniform process for an informal review of a department decision to refuse to issue or renew all nonrecreational permits or licenses identified by the Sunset Advisory Commission for which a statutorily created review process is not provided.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rules have no effect on small businesses, micro-businesses, or rural communities. On this basis, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Allison Winney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560; email: allison.winney@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

## SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

### 31 TAC §57.124

The amendment is proposed under Parks and Wildlife Code, §66.007, which authorizes the commission to promulgate rules necessary to implement that section.

The proposed amendment affects Parks and Wildlife Code, Chapter 66.

§57.124. *Refusal to Issue*; *Review of Agency Decision to Refuse Issuance*.

~~(a)~~ ~~[Refusal to issue.]~~

~~(1)~~ ~~In addition to the provisions of Chapter 56 of this title (relating to Agency Decision to Refuse License or Permit Issuance or Renewal and Agency Decision to Suspend or Revoke Affected License or Permit, the [The] department may refuse issuance or renewal, as applicable, of a permit to any person or for any facility if the department determines that a prospective activity constitutes a threat to native species, habitats, or ecosystems or is inconsistent with department management goals and objectives.~~

~~(2)~~ ~~The department may refuse issuance, amendment, or renewal, as applicable, of a (permit to any person:)~~

~~(A)~~ ~~who has been convicted of, pleaded guilty or nolo contendere to, received deferred adjudication or pre-trial diversion for, or been assessed an administrative or civil penalty for a violation of:]~~

~~(i)~~ ~~this subchapter;]~~

~~(ii)~~ ~~Parks and Wildlife Code, §§66.007, 66.0072, or 66.015;]~~

~~(iii)~~ ~~Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony;]~~

~~(iv)~~ ~~Penal Code, §37.10;]~~

~~(v)~~ ~~Lacey Act, 16 U.S.C. §§3371-3378; or]~~

~~(vi)~~ ~~a provision of federal law applicable to grass carp;]~~

~~(B)~~ ~~if another person employed, authorized, or otherwise utilized to perform permitted activities by the applicant has been convicted of, pleaded guilty or nolo contendere to, or received deferred adjudication or pre-trial diversion for an offense listed in subsection (a)(2)(A) of this section.]~~

[(3) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is not eligible for a permit under the provisions of this subchapter.]

[(4) The department may refuse to renew the permit of any person who is not in compliance with applicable reporting or record-keeping requirements.]

[(5) The duration of the denial period may be:]

[(A) determined by the department based upon the severity and relevance of the conviction and the applicant's conviction and permit compliance history; and]

[(B) up to a period of five calendar years.]

[(b) Review of agency decision to refuse issuance.]

[(1) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).]

[(2) An applicant seeking review of a decision of the department must submit a written request for review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.]

[(3) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.]

[(4) The department shall seek to conduct the review within 30 days of receipt of the request required by paragraph (2) of this subsection unless another date is established in writing by mutual agreement between the department and the requestor.]

[(5) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with knowledge of relevant resources or programs, appointed or approved by the executive director or designee.]

[(6) The decision of the review panel is final.]

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

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James Murphy

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## SUBCHAPTER E. PERMITS TO POSSESS OR SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

### 31 TAC §57.384

The amendment is proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limitations on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendment affects Parks and Wildlife Code, Chapter 67.

§57.384. *Refusal to Issue[; Review of Agency Decision to Refuse Issuance].*

[(a)] The department may refuse to authorize any prospective activity on any water body or impose restrictions on permitted species, water bodies, devices, or live transfer if the department determines that:

(1) - (4) (No change.)

[(5) the applicant or assistant(s) have been:]

[(A) convicted of, pleaded guilty or nolo contendere to, or received deferred adjudication for a violation of Parks and Wildlife Code or a regulation of the commission; or]

[(B) convicted, pleaded guilty or nolo contendere, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371 - 3378 (the Lacey Act); or]

[(C) the department has evidence that the applicant is acting on behalf of or as a surrogate for another person not eligible for a permit under this subsection.]

[(b) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.]

[(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall submit a written request to the department within 10 working days of being notified by the department of permit denial.]

[(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review. The decision of the review panel shall be final.]

[(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:]

[(A) the Deputy Executive Director for Natural Resources (or his or her designee);]

[(B) the Director of the Inland Fisheries Division (or his or her designee), as appropriate; and]

[(C) a department employee designated by the Director of the Inland Fisheries Division.]

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

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General Counsel

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## CHAPTER 57. FISHERIES

### SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

#### 31 TAC §57.127

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to §57.127, concerning a Memorandum of Understanding (MOU) between TPWD, the Texas Commission on Environmental Quality (TCEQ), and the Texas Department of Agriculture (TDA). The proposed amendment would adopt by reference a revised MOU adopted by the TCEQ and published in the May 13, 2022, issue of the *Texas Register* (47 TexReg 2864). The proposed amendment also retitles the section to reflect the fact that TDA is no longer involved in aquaculture facility licensure.

The proposed amendment is necessary to implement applicable provisions of Senate Bill (S.B.) 703, 87th Legislature, Regular Session, which eliminated TDA's primary role and responsibilities related to regulation of aquaculture (i.e., facility licensure). Prior to the enactment of S.B. 703, regulation of aquaculture in Texas was coordinated by the terms of an MOU between the department, TCEQ, and TDA, as required by statute. The proposed amendment would adopt by reference a revised MOU that reflects the removal of TDA's regulatory licensure role with respect to aquaculture and delineates each agency's responsibilities. The revised MOU outlines coordination procedures for the review of revisions of the TCEQ Aquaculture General Permit and individual wastewater discharge permit applications and notices of intent to be covered under the TCEQ general permit and establishes operating procedures and scope.

Robert MacDonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

There will be no fiscal implications for persons required to comply with the rule as proposed.

Mr. MacDonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the required coordination of regulatory responsibilities concerning aquaculture.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule will not result in any direct economic costs to any small businesses, micro-businesses, or rural communities; therefore, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not limit or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Monica McGarrity, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 552-3465; email: monica.mcgarritty@tpwd.texas.gov or via the department website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

The rule is proposed under Agriculture Code, §134.031, which requires the Texas Commission on Environmental Quality and the Texas Parks and Wildlife Department to enter into a memorandum of understanding for the regulation of matters related to aquaculture, and §134.005, which requires the commission to adopt rules to carry out duties under the chapter.

The proposed rule affects Agriculture Code, Chapter 134.

*§57.127. Memorandum of Understanding between the Texas Parks and Wildlife Department and [the Texas Commission on Environmental Quality Regarding the Regulation of Aquaculture], and the Texas Department of Agriculture.*

The provisions of 30 TAC §7.103 (relating to Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality and [(Commission),] the Texas Parks and Wildlife Department Regarding the Regulation of Aquaculture) in effect on May 19, 2022 [(TPWD), and the Texas Department of Agriculture (TDA), which were adopted by the Commission to take effect January 9, 2001,] are adopted by reference.

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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## CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §65.154, concerning Issuance of Permit; Amendment and Renewal; §65.255 and §65.256, concerning Bobcat Dealer Permits; §65.264, concerning Permit Application Requirements; §65.329, concerning Permit Application; §65.363, concerning Nuisance Alligator Control; and §65.376, concerning Possession of Live Fur-bearing Animals.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement. The department notes that the proposed amendment to §65.256, concerning Penalties, corrects an inaccurate internal reference with respect to violations. The penalties for violation of the subchapter are prescribed by statute and the rule text is simply intended to recapitulate that fact; however, the statement in current rule is inaccurate and should reflect the fact that violations of the subchapter, not the subsection, are punishable as provided in Parks and Wildlife Code.

In another proposed rulemaking published elsewhere in this edition of the *Texas Register*, the department would establish a uniform process for decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The proposed amendments would eliminate the current rules governing agency decisions to refuse permit issuance or renewal for various permits and licenses and retitle affected sections where necessary.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of administering the rules.

There will be no effect on persons required to comply with the rules as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be compliance with the recommendations of the Texas Sunset Commission.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rules have no effect on small businesses, micro-businesses, or rural communities. On this basis, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Allison Winney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560; email: allison.winney@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

## SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

### 31 TAC §65.154

The amendment is proposed under Parks and Wildlife Code, §43.109, which authorizes the commission to make regulations governing management of wildlife or exotic animals by the use of aircraft, including procedures for permit applications and rules to require, limit, or prohibit any activity as necessary to implement the subchapter.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§65.154. *Issuance of Permit; Amendment and Renewal.*

(a) Upon the filing of a properly executed application and payment of the fee specified by §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits), the department may issue or renew an AMP to an individual if:

~~{(1) the applicant has not failed to disclose any material information required, or has not made any false statement regarding any material fact in connection with the application;}~~

(1) ~~[(2)]~~ the applicant will use the AMP only for the purpose of protecting or aiding in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops; and

(2) ~~[(3)]~~ the AMP requested, in the judgment of the department, will aid in the management of wildlife and exotic animals and will not have a deleterious effect on indigenous species.

(b) - (c) (No change.)

~~{(d) The department may refuse to issue to or renew an AWMP for any person who has been finally convicted of, pleaded nolo con-~~

tendere to, received deferred adjudication, or assessed an administrative penalty for a violation of:]

[(1) Parks and Wildlife Code, Chapter 43, Subchapter C, E, G, L, R, or R-1;]

[(2) a provision of the Parks and Wildlife Code that is not described by paragraph (1) of this subsection that is punishable as a Parks and Wildlife Code:]

[(A) Class A or B misdemeanor;]

[(B) state jail felony; or]

[(C) felony;]

[(3) Parks and Wildlife Code, §63.002;]

[(4) the Lacey Act (16 U.S.C. §§3371-3378); or]

[(5) 16 U.S.C. §742j-1 (commonly referred as the Airborne Hunting Act, or AHA).]

[(e) The department may refuse to issue an AMP to or renew an AMP for any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from obtaining an AMP or engaging in AMP activities.]

[(f) An applicant for an AMP or AMP renewal may request a review of a decision of the department to refuse issuance of an AMP or AMP renewal (as applicable).]

[(1) An applicant seeking review of a decision of the department with respect to the issuance or renewal of an AMP must request the review within 10 working days of being notified by the department that the application has been denied.]

[(2) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.]

[(3) The department shall conduct the review within 30 days of receipt of the request required by paragraph (2) of this subsection, unless another date is established in writing by mutual agreement between the department and the requestor.]

[(4) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the management of wildlife from aircraft, appointed or approved by the executive director, or designee.]

[(5) The decision of the review panel is final.]

[(d) [(g)] No person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication for, or assessed an administrative penalty for an offense listed in this section may act or contract to act as a gunner for an AMP holder.

[(c) [(h)] An AMP is not transferable or assignable.

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

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General Counsel

Texas Parks and Wildlife Department

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◆ ◆ ◆  
SUBCHAPTER J. BOBCAT PROCLAMATION

31 TAC §65.255, §65.256

The amendments are proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limitations on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapter 67.

§65.255. *Bobcat Dealer Permits.*

(a) - (d) (No change.)

[(e) The department reserves the right to refuse tag issuance to any dealer not in compliance with the provisions of this subchapter.]

§65.256. *Penalties.*

The penalties for violations of this subchapter [subsection] shall be as prescribed in Parks and Wildlife Code, Chapter 67.

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

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General Counsel

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SUBCHAPTER K. RAPTOR PROCLAMATION

31 TAC §65.264

The amendment is proposed under Parks and Wildlife Code, Chapter 64, which authorizes the commission to prescribe eligibility requirements and fees for and issue any falconry, raptor propagation, or nonresident trapping permit.

The proposed amendment affects Parks and Wildlife Code, Chapter 64.

§65.264. *Permit Application Requirements.*

(a) - (f) (No change.)

[(g) The department may refuse permit issuance or renewal to any person who within five years of applying for a permit issued under the authority of this subchapter has been finally convicted of or received deferred adjudication for:]

[(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R or Chapter 49;]

[(2) a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony; or]

[(3) a violation of Parks and Wildlife Code, §63.002.]

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 O. COMMERCIAL NONGAME PERMITS

### 31 TAC §65.329

The amendment is proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limitations on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendment affects Parks and Wildlife Code, Chapter 67.

§65.329. *Permit Application.*

(a) - (b) (No change.)

[(c) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of:]

[(1) Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;]

[(2) Parks and Wildlife Code, Chapter 67;]

[(3) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;]

[(4) Parks and Wildlife Code, §63.002; or]

[(5) the Lacey Act (16 U.S.C. §§3371-3378).]

[(d) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for an offense listed in subsection (e) of this section.]

[(e) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subsection from engaging in permitted activities.]

[(f) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.]

[(g) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).]

[(h) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.]

[(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.]

[(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (g) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.]

[(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.]

[(4) The decision of the review panel is final.]

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 P. ALLIGATOR PROCLAMATION

### 31 TAC §65.363

The amendment is proposed under Parks and Wildlife Code, §65.003, which authorizes the commission to promulgate regulations to provide for permit application forms, fees, and procedures, and hearing procedures.

The proposed amendment affects Parks and Wildlife Code, Chapter 65.

§65.363. *Nuisance Alligator Control.*

(a) (No change.)

(b) Permit Application and Issuance.

(1) (No change.)

(2) In addition to the provisions of Chapter 56 of this title (relating to Agency Decision to Refuse License or Permit Issuance or Renewal and Agency Decision to Suspend or Revoke Affected License or Permit), the [The] department may refuse to issue a permit to any person who, in the department's determination, lacks the skill, experience, or aptitude to adequately perform the activities typically involved in nuisance alligator control.

(c) - (f) (No change.)

[(g) Denial of Permit Issuance. The department may refuse permit issuance to any person who has been convicted of, pleaded nolo contendere to, or received deferred adjudication for:]

[(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, or Parks and Wildlife Code, Chapter 65;]

[(2) a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or a felony;]

[(3) a violation of Parks and Wildlife Code, §63.002; or]

{(4) convicted, pleaded nolo contendere, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371 - 3378 (the Lacey Act).}

{(h) Review of Agency Decision. An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit.}

{(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.}

{(2) The department shall schedule a review within 10 days of receipt of a request for a review. The department shall conduct the review and notify the applicant of the results within 45 working days of receiving a request for review.}

{(3) The request for review shall be presented to a review panel. The review panel shall consist of the following, or their designees:}

{(A) the Deputy Executive Director for Fisheries and Wildlife;}

{(B) the Director of the Wildlife Division; and}

{(C) the Deputy Division Director of the Wildlife Division.}

{(4) The decision of the review panel is the final department decision.}

{(g) {(i)} Prohibited Acts. It is an offense for a permittee to:

(1) violate a provision of this subchapter;

(2) violate a condition of a permit issued under this subchapter; or

(3) treat or allow the treatment of an alligator in a cruel manner as defined in Penal Code, §42.092.

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

### 31 TAC §65.376

The amendment is proposed under Parks and Wildlife Code, §71.002, which authorizes the commission to promulgate regulations to provide for permit application forms, fees, and procedures, and hearing procedures.

The proposed amendment affects Parks and Wildlife Code, Chapter 71.

§65.376. *Possession of Live Fur-bearing Animals.*

(a) - (f) (No change.)

{(g) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of:}

{(1) Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;}

{(2) Parks and Wildlife Code, Chapter 71;}

{(3) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;}

{(4) Parks and Wildlife Code, §63.002; or}

{(5) the Lacey Act (16 U.S.C. §§3371-3378).}

{(h) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for an offense listed in subsection (g) of this section.}

{(i) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subsection from engaging in permitted activities.}

{(j) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.}

{(k) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).}

{(l) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.}

{(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.}

{(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (k) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.}

{(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.}

{(4) The decision of the review panel is final.}

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

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CHAPTER 69. RESOURCE PROTECTION  
SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

**31 TAC §69.303**

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §69.303, concerning Application for Permit and Permit Issuance.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

In another proposed rulemaking published elsewhere in this edition of the *Texas Register*, the department would establish a uniform process for decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The proposed amendments would eliminate the current rules governing agency decisions to refuse permit issuance or renewal for various permits and licenses and retitle affected sections where necessary.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of administering the rules.

There will be no effect on persons required to comply with the rules as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the establishment of a uniform process for an informal review of a department decision to refuse to issue or renew all nonrecreational permits or licenses identified by the Sunset Advisory Commission for which a statutorily created review process is not provided.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition;

or require the purchase or modification of equipment or services. The department has determined that the proposed rules have no effect on small businesses, micro-businesses, or rural communities. On this basis, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Allison Winney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560; email: allison.winney@tpwd.texas.gov or via the department website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

The amendment is proposed under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

*§69.303. Application for Permit and permit issuance.*

~~{(a)}~~ No permits for activities governed under this subchapter may be issued to any person unless the person has met the requirements of this section. An applicant for a permit under this subchapter shall submit to the department:

(1) - (4) (No change.)

~~{(b)}~~ The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of:

~~{(1)}~~ Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

~~{(2)}~~ a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;

~~{(3)}~~ Parks and Wildlife Code, §63.002; or

~~{(4)}~~ the Lacey Act (16 U.S.C. §§3371-3378).

[(c) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded nolo contendere to, received deferred adjudication, or assessed an administrative penalty for an offense listed in subsection (b) of this section.]

[(d) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.]

[(e) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.]

[(f) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).]

[(g) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.]

[(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.]

[(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (f) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.]

[(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.]

[(4) The decision of the review panel is final.]

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 20. TEXAS WORKFORCE COMMISSION**

#### **CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER B. ALLOCATIONS**

##### **40 TAC §§800.52, 800.71, 800.78, 800.80**

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §§800.52, 800.71, 800.78, and 800.80

#### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of the proposed Chapter 800 amendment is to provide TWC's three-member Commission (Commission) flexibility when deobligating Adult Education and Literacy (AEL) statewide funds and considering an AEL grant recipient's performance when reallocating deobligated funds.

#### **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

#### **SUBCHAPTER B. ALLOCATIONS**

TWC proposes the following amendments to Subchapter B:

##### **§800.52. Definitions.**

Section 800.52(5), the definition for "Deobligation," is amended to add §800.78 and §800.79 to the rule reference.

##### **§800.71. General Deobligation and Reallocation Provisions**

Section 800.71(b) is amended to add §§800.78 - 800.80 to the rule reference.

##### **§800.78. Midyear Deobligation of AEL Funds**

Section 800.78 is amended to rename the section "Deobligation of AEL Funds."

Section 800.78(a) is amended to update the reference to §800.78(d). Section 800.78(d) is proposed for deletion and the reference is updated to §800.80(a), which contains similar language to the language that is proposed for deletion.

Section 800.78(a)(1) amends the time in which TWC may review expenditures for deobligation from months four to seven, to any month after month four.

Section 800.78(d), which provides that amounts deobligated from an AEL grant recipient must be made available as a first priority to another grant recipient providing AEL services in the same workforce area, is deleted. The subsequent subsection is relettered accordingly.

##### **§800.80. Reallocation of AEL Funds**

Section 800.80 is amended to modify the criteria a grant recipient must meet in order to receive deobligated funds and revise language related to the reallocation of funds.

New §800.80(a)(7) is added to require a grant recipient to be meeting performance for the program year to receive deobligated funds.

Section 800.80(b) is amended to clarify that the Commission must approve any plan to reallocate deobligated funds. Section 800.80(b) also is amended to add that the Commission may make those funds as a first priority to other grant recipients within the same workforce area meeting the criteria in §800.80(a). Existing language provides that the Commission must approve an acceptable plan to reallocate funds to a grant recipient within the workforce area; and the new language provides that grant recipients outside the workforce area may be considered by the Commission, provided that requirements in §800.80(a) are met. Section 800.80(b) also is amended to add that if AEL grant recipients outside the workforce area are not able to meet the criteria

in §800.80(a), then TWC staff will present an alternate plan for the Commission's consideration.

### PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

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

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to provide the Commission flexibility when deobligating AEL statewide funds and to consider an AEL grant recipient's performance when reallocating deobligated funds.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

#### Government Growth Impact Statement

TWC determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

-- will not positively or adversely affect the state's economy.

#### Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to grant the Commission flexibility when reallocating deobligated AEL funds, and to ensure such funds are reallocated efficiently within the state.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the policy concept regarding these rule amendments to the Boards for consideration and review on March 22, 2022. TWC also conducted a conference call with AEL Grant Recipients on March 24, 2022, and then with Board executive directors and Board staff on March 25, 2022, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

### PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) and must be received no later than August 22, 2022.

### PART VI.

#### STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the requirements set out in Workforce Innovation and Opportunity Act Title II and Texas Labor Code, Chapter 315.

§800.52. *Definitions.*

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

(1) **Accrued Expenditures**--Charges incurred during a given period for goods and tangible property received and services performed that cause decreases in net financial resources.

(2) **All-Family Participation Rate**--The percentage of all families receiving TANF benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, §407, as amended.

(3) **Contract Closeout Settlement Package**--Financial, performance, and other reports required as a condition of the contract, which must be submitted when one of the following conditions is met:

(A) the contract has expired;

(B) all available funds for the contract period have been paid out;

(C) all accrued expenditures chargeable to the specific contract have been incurred; or

(D) the period of available funds has expired or been terminated.

(4) **Contract Period**--The length of time in which a contract for allocated funds between the Commission and a Board or an AEL grant recipient is in effect and during which funds may be expended for a specified purpose, unless prohibited by a federal grantor agency. A contract period longer than a program year shall be specified under the terms of a properly executed contract.

(5) **Deobligation**--An action adopted by the Commission to decrease an amount for a specific program and contract period in a contract with a Board or an AEL grant recipient for allocated funds, on the basis of provisions as set forth in §§800.73, ~~and §~~800.74, 800.78, and 800.79 of this subchapter (relating to Child Care Match Requirements and Deobligation; Midyear Deobligation of Funds; Midyear Deobligation of AEL Funds; and Voluntary Deobligation of AEL Funds).

(6) **Equal Base Amount**--An amount equivalent to .10 percent (one-tenth of one percent) of a total allocation, which shall be provided equally to each workforce area.

(7) **Hold Harmless/Stop Gain**--A procedure that assures that a relative proportion of an allocation to a workforce area is not below 90 percent of the corresponding proportion for the past two years, or that the current year proportion is not above 125 percent of the prior two-year relative proportion.

(8) **Monthly expenditure report**--A written or electronically submitted report by a Board or an AEL grant recipient that contains information regarding services for each category of funding allocated by the Commission, and in which the Board or an AEL grant recipient lists expenditures and obligations by category of funding.

(9) **Obligation**--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated 60 calendar days after the end of a contract

period, unless such definition is superseded [supereeded] by federal requirements.

(10) **Relative proportion of the program year**--The corresponding part of the program year that is used to compare expenditures. That is, if 50 percent of the program year has transpired, then the relative proportion of the program year is 50 percent.

(11) **WIA Formula Allocated Funds**--Funds allocated by formula to workforce areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker, and Youth.

§800.71. *General Deobligation and Reallocation Provisions.*

(a) **Purpose.** The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) **Scope.** Sections 800.71 - 800.80 [~~800.77~~] of this subchapter shall apply to funds provided to workforce areas under a contract between the Board or an AEL grant recipient and the Commission for the following categories of funding:

(1) Adult Education and Literacy

(2) Child Care

(3) Choices

(4) Employment Service

(5) SNAP E&T

(6) Project RIO

(7) WIA Alternative Funding for Statewide Activities

(8) WIA Alternative Funding for One-Stop Enhancements

§800.78. [*Midyear*] *Deobligation of AEL Funds.*

(a) The Commission may deobligate funds from an AEL grant recipient during the program year if an AEL grant recipient is not meeting the expenditure thresholds set forth in subsection (b) of this section, provided, however, that the requirements of §800.80(a) of this subchapter [~~subsection (d) of this section~~] are satisfied.

(1) AEL grant recipients that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of month [~~months~~] four[, five, six, or seven] (October, or any month thereafter, [~~November, December, or January~~]) will be reviewed to determine the causes for the under expenditure of funds, except as set forth in subsection (d) [~~subsection (e)~~] of this section.

(2) The Commission shall not deobligate more than the difference between an AEL grant recipient's actual expenditures and the amount corresponding to the relative proportion of the program year.

(3) The Commission shall not deobligate funds from an AEL grant recipient that failed to meet the expenditure thresholds set forth in subsection (b) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

(b) The Commission may deobligate funds from an AEL grant recipient midyear, as set forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year.

(c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification. For an AEL consortium, a copy must be provided to all AEL consortium members. The

written justification shall provide sufficient detail regarding the actions an AEL grant recipient will take to address its deficiencies, including:

- (1) expansion of services proportionate to the available resources;
- (2) projected service levels and related performance;
- (3) reporting outstanding obligations; and
- (4) any other factors an AEL grant recipient would like the Commission to consider.

~~[(d) Any amounts deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of §800.80(a) of this subchapter, upon receipt and approval by the Commission of an acceptable plan.]~~

~~(d) [(e)]~~ To the extent this section may be found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

*§800.80. Reallocation of AEL Funds.*

(a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the Commission may consider whether the AEL grant recipient:

- (1) has met targeted expenditure levels as required by §800.78(a) ~~and~~ [-] (b) of this subchapter, as applicable, for that period;
- (2) has not expended or obligated more than 100 percent of the workforce area's allocation for the category of funding;
- (3) has demonstrated that expenditures conform to cost category limits for funding;
- (4) has demonstrated the need for and ability to use additional funds;
- (5) is current on expenditure reporting;
- (6) is current with all single audit requirements; ~~and~~
- (7) is meeting performance for the program year; and
- (8) ~~[(7)]~~ is not under sanction.

(b) The Commission must approve any plan to reallocate funds ~~[Any amounts] deobligated or voluntarily deobligated from [an] AEL grant recipients. The Commission may make such funds [recipient shall be made] available as a first priority to any other AEL grant recipients providing AEL services within the same workforce area meeting [that meet] the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan. Following the determination that any such plan has not been determined to be acceptable, the Commission may consider [an] AEL grant recipients outside the workforce area [recipient] satisfying the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan. In the event AEL grant recipients outside the workforce area are not able to meet the requirements of subsection (a) of this section, Agency staff will present an alternate plan for Commission consideration.~~

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

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Les Trobman

General Counsel

Texas Workforce Commission

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## CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 805, relating to Adult Education and Literacy:

Subchapter A. General Provisions, §805.2 and §805.4

Subchapter B. Staff Qualifications, §805.21

Subchapter C. Service Delivery Structure and Alignment, §805.41 and §805.43

### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 805 amendment is to add and clarify AEL terms and definitions, clarify professional development requirements and activities that must be provided by Adult Education and Literacy (AEL) programs, and to modify an advisory committee term requirement.

Further, the General Appropriations Act (Senate Bill (SB) 1, Article VII, Texas Workforce Commission, Rider 46, 87th Legislature, Regular Session (2021)) requires TWC to ensure and require that digital skill building is permitted in its programs. Terms and definitions for "digital literacy skills" and "workforce preparation activities" are proposed to indicate that such activities are expressly allowed under the Workforce Innovation and Opportunity Act (WIOA) and to support digital skill building.

Texas Government Code, §2001.039 requires that every four years each state agency review and consider for re adoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 805 and any changes are described in Part II of this preamble.

### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

#### SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

##### §805.2. Definitions

Section 805.2 is amended to both modify and add definitions.

Section 805.2(4) is amended to modify the definition for "AEL grant recipient" to update the definition reference for "workforce development area" and to clarify that an AEL grant recipient is one that is awarded AEL funds by TWC through a statewide procurement process described in §805.41.

Section 805.2(6) is amended to include a reference to WIOA and update the reference to the United States Code in the definition for "AEL service provider."

New §805.2(11) is added to define "digital literacy skills." Subsequent paragraphs are renumbered accordingly.

Renumbered §805.2(16) is amended to modify the definition for "professional development" to remove the duration for what is considered a professional development activity.

New §805.2(20) is added to define "workforce preparation activities." The subsequent paragraph is renumbered accordingly.

#### §805.4. Essential Program Components

Section 805.4 provides that an AEL grant recipient must ensure the essential program components are provided. The section is amended to add language to clarify that those essential program components are outlined in the grant applications for statewide AEL funds.

Section 805.4(7) is amended to clarify that workforce preparation activities include digital literacy skills.

Section 805.4(9) is amended to change "and" to "or" to clarify options for meeting the section's requirements.

#### SUBCHAPTER B. STAFF QUALIFICATIONS

TWC proposes the following amendments to Subchapter B:

##### §805.21. Staff Qualifications and Training

Section 805.21 is amended to clarify that the subchapter is applicable to all AEL staff by deleting the language that specifies the subchapter applies to all AEL staff hired after July 1, 2013.

Section 805.21(6) is amended to clarify that instructional aides who provide instruction to students require 15 clock hours of professional development.

Section 805.21(8) is amended to specify that non-instructional AEL staff must have at least three hours of professional development.

#### SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

TWC proposes the following amendments to Subchapter C:

##### §805.41. Procurement and Contracting

Section 805.41 is amended to delete "beginning with Program Year 2014" when describing when eligible grant recipients are required to compete for funding through a statewide procurement process.

##### §805.43. Advisory Committees

Section §805.43 is amended to rename the section "AEL Advisory Committee."

Section 805.43 is amended to modify the requirement that AEL advisory committee members serve for staggered two-year terms; the proposed amendment removes the word "staggered" from the two-year term requirement.

#### PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

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

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to add and clarify AEL terms and definitions, clarify professional development requirements and activities that must be provided by AEL programs, and modify an advisory committee term requirement.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

#### Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.



## Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to clarify program policy related to AEL service delivery and to include digital skill building as part of workforce programs as required by the General Appropriations Act (SB 1, Article VII, Texas Workforce Commission, Rider 46).

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the policy concept regarding these rule amendments to the Boards for consideration and review on March 22, 2022. TWC also conducted a conference call with AEL Grant Recipients on March 24, 2022, and then with Board executive directors and Board staff on March 25, 2022, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

### PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) and must be received no later than August 22, 2022.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §805.2, §805.4

#### PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the requirements set out in the General Appropriations Act (SB 1, Article VII, Texas Workforce Commission, Rider 46) and bring the rules into alignment with WIOA Title II and Texas Labor Code, Chapter 315.

#### §805.2. Definitions.

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

(1) **Adult education**--Programs, activities, and services that include adult education, literacy, workplace adult education and literacy activities, family literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, or integrated education and training.

(2) **AEL consortium**--A partnership of educational, workforce development, social service entities, and other public and private organizations that agree to partner, collaborate, plan, and apply

for funding to provide AEL and related support services. Consortium members shall include an AEL grant recipient, AEL fiscal agent, an AEL lead organization of a consortium, and AEL service provider(s). Consortium members may serve in one or more of the functions in accordance with state statutes and Commission rules.

(3) **AEL fiscal agent**--An entity that is assigned financial management duties as outlined in an Agency-AEL contract or is assigned this function as a member of an AEL consortium.

(4) **AEL grant recipient**--An eligible grant recipient within a local workforce development area (workforce area), as defined in §800.2 [§800.2(11)] of this title, that is awarded AEL funds by the Agency through the statewide procurement process described in §805.41 of this chapter (relating to Procurement and Contracting). The AEL grant recipient also may act as an AEL lead organization of a consortium, AEL fiscal agent, or AEL service provider as designated in an agreement with an AEL consortium.

(5) **AEL lead organization of a consortium**--An organization designated as the AEL consortium manager in a written agreement between AEL consortium members. The AEL lead organization of a consortium is responsible for planning and leadership responsibilities as outlined in the written agreement and also may serve as an AEL grant recipient, AEL fiscal agent, or AEL service provider. If a consortium does not identify the lead organization of a consortium through a written agreement, the AEL grant recipient will be presumed to assume the responsibility of the lead organization of the consortium.

(6) **AEL service provider**--An entity that is eligible to provide AEL services as specified in the Workforce Innovation and Opportunity Act (WIOA) §203(4)/29 United States Code §3272 [20 USC §9202] and Texas Labor Code, §315.003.

(7) **Assessment services**--The processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance that direct placement, progress, achievement, and overall program accountability in AEL and other services, including the identification of potential academic or support service needs.

(8) **Clock hour**--60 minutes.

(9) **College and career transitional support**--Support that may include, but is not limited to, recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.

(10) **Contact time**--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, assessment, or testing services (except for testing services used to determine eligibility) from a staff member supported by federal and state AEL funds as documented by local attendance and reporting records.

(A) Student contact time generated by volunteers may be accrued by the AEL program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §805.21 of this chapter [title] (relating to Staff Qualifications and Training).

(B) A student contact hour is 60 minutes.

(11) **Digital literacy skills**--The skills associated with:

(A) using technology to enable users to find, evaluate, organize, create, and communicate information; and

(B) developing digital citizenship and the responsible use of technology.

(12) [(11)] Eligible grant recipient--An entity, as specified in state and federal law, that is eligible to receive AEL program funding. Eligible grant recipients are organizations that have demonstrated effectiveness in providing adult education and literacy activities, and may include:

- (A) a local educational agency;
- (B) a community-based organization or faith-based organization;
- (C) a volunteer literacy organization;
- (D) an institution of higher education;
- (E) a public or private nonprofit agency;
- (F) a library;
- (G) a public housing authority;
- (H) a nonprofit institution that is not described in any of subparagraphs (A) - (G) [(A) through (G)] of this paragraph and has the ability to provide adult education and literacy services to eligible individuals;
- (I) a consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) - (H) [(A) through (H)] of this paragraph; and

(J) a partnership between an employer and an entity described in any of subparagraphs (A) - (I) [(A) through (I)] of this paragraph.

(13) [(12)] Literacy--An individual's ability to read, write, and speak in English, and to compute and solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

(14) [(13)] Principles of adult learning--A wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

(15) [(14)] Proctoring--Support in the administration of tests or pretests under the guidance of a staff member who oversees program assessment services and/or accountability assessment.

(16) [(15)] Professional development--Encompasses all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration [that meets for a minimum of one hour and upwards in increments of one half (0.5) hour (that is, the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System)] to accomplish a predetermined educational or learning outcome that is tracked in the statewide AEL data management information system.

(17) [(16)] Program year--The AEL program year is July 1 through June 30.

(18) [(17)] Substitute--An instructor who works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.

(19) [(18)] Support services--Services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities as defined in WIOA [Workforce Innovation and Opportunity Act (WIOA)] §2.

(20) Workforce preparation activities--Activities, programs, or services described in WIOA §203(17), which are designed to help an individual acquire a combination of basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in utilizing resources, using information, working with others, understanding systems, and obtaining skills necessary for successful transition into and completion of postsecondary education, training, or employment.

(21) [(19)] Workforce training--Services described in WIOA §134(c)(3)(D), including the following:

- (A) occupational skills training, including training for nontraditional employment;
- (B) on-the-job training;
- (C) incumbent worker training;
- (D) programs that combine workplace training with related instruction, which may include cooperative education programs;
- (E) training programs operated by the private sector;
- (F) skill upgrading and retraining;
- (G) entrepreneurial training;
- (H) transitional jobs;
- (I) job readiness training provided in combination with services described in any of subparagraphs (A) - (H) [(A) through (H)] of this paragraph;

(J) AEL activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with services described in any of subparagraphs (A) - (G) [(A) through (G)] of this paragraph; and

(K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

#### §805.4. Essential Program Components.

An AEL grant recipient shall ensure that [the following] essential program components are provided, as outlined in the grant application for statewide AEL funds, which include:

- (1) Adult education;
- (2) Literacy;
- (3) Workplace adult education and literacy activities;
- (4) Family literacy activities;
- (5) English language acquisition services;
- (6) Integrated English literacy and civics education;

(7) Workforce preparation activities, which includes digital literacy skills;

(8) Integrated education and training;

(9) Assessment and guidance services related to paragraphs (1) - (8) of this section; or [and]

(10) Collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

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

Filed with the Office of the Secretary of State on July 5, 2022.

TRD-202202509

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 21, 2022

For further information, please call: (512) 756-3550



## SUBCHAPTER B. STAFF QUALIFICATIONS

### 40 TAC §805.21

The rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule implements the requirements set out in the General Appropriations Act (SB 1, Article VII, Texas Workforce Commission, Rider 46) and bring the rules into alignment with WIOA Title II and Texas Labor Code, Chapter 315.

#### *§805.21. Staff Qualifications and Training.*

The requirements of this section shall apply to all AEL staff ~~hired after July 1, 2013~~, excluding clerical and janitorial staff.

(1) AEL instructional aides, administrative, data entry, proctoring staff, and staff providing support or employment services to students shall have at least a high school diploma or high school equivalency certificate.

(2) AEL directors, supervisors, and staff that oversee program assessment services and/or overall program accountability, and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.

(3) Workforce training instructors must meet the requirements of the institution and/or the associated accrediting or credentialing entity, if applicable.

(4) Requests for exemptions for staff qualification requirements in individual cases:

(A) may be submitted to the Agency for approval with a justification outlining extenuating circumstances; and

(B) shall be submitted and approved prior to an individual being placed in the position in question.

(5) All AEL directors and supervisors, and other staff with program oversight or coordination responsibilities shall receive 15 clock hours of professional development each program year with the

following exception: Staff hired on or after January 1 of a program year may require half of the professional development time required for that program year.

(6) All AEL instructional staff, including instructional aides providing instruction to students, except substitutes, paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year, with the following specifications:

(A) Instructors in the content areas of reading, writing, mathematics, and English language acquisition shall:

(i) receive three clock hours of training in principles of adult learning;

(ii) receive six clock hours in relevant areas of literacy instruction; and

(iii) receive the remaining six clock hours of training in content areas at the discretion of the program, but consisting of content related to the AEL program's purpose, which is to provide adults with sufficient basic education that enables them to effectively:

(I) acquire the basic educational skills necessary for literate functioning;

(II) participate in job training and retraining programs;

(III) obtain and retain employment; and

(IV) continue their education to at least the level of secondary school completion and postsecondary education preparation; or

(iv) waive six clock hours of content area in staff professional development for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.

(B) Staff, as described in subparagraph (A) of this paragraph, hired on or after January 1 of a program year, may require half of the professional development time required for that program year. For instructors in the content areas of reading, writing, mathematics, and English language acquisition, these hours must include three clock hours of training in principles of adult learning and three clock hours in the relevant areas of literacy instruction.

(C) Staff described in this paragraph ~~[(6) of this section]~~ shall receive at least six clock hours of the required professional development outlined in subparagraph (A)(i) - (iii) of this paragraph ~~[(6)(A)(i) - (iii) of this section]~~ within 30 calendar days of providing instructional activities, if new to AEL or to direct student service delivery. The six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. Waiving of the requirements for staff new to direct student services must be approved by Agency AEL staff prior to the individual providing any instructional services.

(7) All staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.

(8) AEL non-instructional support staff, such as, but not limited to, those assigned test proctoring or data entry duties, shall receive at least three clock hours of professional development related to their primary job duties each program year.

(9) The requirements for professional development may be reduced by grant recipients in individual cases in which exceptional circumstances prevent employees from completing the required hours of professional development. Exceptional circumstances can include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Documentation justifying these circumstances shall be available for monitoring and as requested by AEL staff.

(10) Records of staff qualifications and professional development shall be maintained by each grant recipient and shall be available for monitoring.

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

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Les Trobman

General Counsel

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## SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

### 40 TAC §805.41, §805.43

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the requirements set out in the General Appropriations Act (SB 1, Article VII, Texas Workforce Commission, Rider 46) and bring the rules into alignment with WIOA Title II and Texas Labor Code, Chapter 315.

#### §805.41. Procurement and Contracting.

(a) ~~Eligible~~ ~~[Beginning with Program Year 2014, eligible]~~ grant recipients shall compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding shall be allocated as set forth in §800.68 of this title.

(b) Eligible grant recipients shall apply directly to the Agency using the grant solicitation process, and shall meet all deadlines, requirements, and guidelines set forth in the grant solicitation.

(c) Contracts awarded to AEL grant recipients shall be limited to two years, with the option of three one-year renewals, at the Commission's discretion. In considering a renewal, the Commission shall take into account performance and other factors.

(1) Renewals for years three, four, and five are not automatic, and are based on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission.

(2) At the completion of the five-year maximum contract term, the Agency shall conduct a new competitive statewide procurement, including those contracts that have been in effect for less than the maximum five-year contract term.

(d) Determinations by the Agency in the statewide procurement process will be based on the indicated ability of the eligible grant

recipient to effectively perform all services and activities needed to fully comply with contract performance requirements and all contract terms and conditions~~[-]~~ and may be influenced by factors used to determine the allocation of AEL funds or other objective data or criteria.

#### §805.43. ~~AEL Advisory Committee~~ ~~[Committees]~~.

~~[Statewide Advisory Committee.]~~ The Commission shall establish a statewide AEL advisory committee, composed of no more than nine members appointed by the Commission.

(1) Committee members shall:

(A) have AEL expertise and may include adult educators, providers, advocates, current or former AEL students, and leaders in the nonprofit community engaged in literacy promotion efforts;

(B) include at least one representative of the business community and at least one representative of a Local Workforce Development Board ~~[(Board)]~~; and

(C) serve for ~~[staggered]~~ two-year terms. The Commission shall provide direction when appointing a member to an additional term.

(2) Membership shall be reviewed when a member's employment changes to determine whether the individual continues to meet the requirements for membership.

(3) The committee shall meet at least quarterly and submit a written report to the Commission on an annual basis.

(4) The committee shall select a presiding officer as required by Texas Government Code, Chapter 2110.

(5) The committee shall advise the Commission on:

(A) the development of:

(i) policies and program priorities that support the development of an educated and skilled workforce in the state;

(ii) statewide curriculum guidelines and standards for AEL services that ensure a balance of education and workplace skills development;

(iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and

(iv) a centralized system for collecting and tracking comprehensive data on AEL program performance outcomes;

(B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy-promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and

(C) any other issue the Commission considers appropriate.

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 July 5, 2022.

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Les Trobman

General Counsel

Texas Workforce Commission

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CHAPTER 839. APPRENTICESHIP  
PROGRAMS - ADDITIONAL  
SUBCHAPTER A. TAX REFUND PILOT  
PROGRAM FOR CERTAIN PERSONS WHO  
EMPLOY APPRENTICES

40 TAC §§839.10 - 839.17

The Texas Workforce Commission (TWC) proposes new Chapter 839, relating to Apprenticeship Programs - Additional, including the following subchapter:

Subchapter A. Tax Refund Pilot Program for Certain Persons Who Employ Apprentices, §§839.10 - 839.17

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 839, Subchapter A rules is to implement Senate Bill (SB) 1524 from the 87th Texas Legislature, Regular Session (2021).

SB 1524 amended Texas Tax Code, Chapter 151, Subchapter I to add new §151.4292, Tax Refund Pilot Program for Certain Persons Who Employ Apprentices, effective January 1, 2022.

Texas Tax Code, §151.4292(a) defines "executive director" and "qualified apprenticeship."

Texas Tax Code, §151.4292(b) stipulates that a person employing at least one apprentice for at least seven months during a calendar year may be eligible for a tax refund if certified by the executive director. The apprentice is not considered employed under Texas Tax Code, §151.4292:

--after the earlier of:

--the fourth anniversary of employment in the position; or

--the conclusion of the term of the apprenticeship position; or

--if the apprentice was employed in another position by the employer immediately before beginning employment in the apprenticeship position.

Texas Tax Code, §151.4292(c) stipulates that the amount of refund for each apprentice described by Texas Tax Code, §151.4292(b) shall be \$2,500.

Texas Tax Code, §151.4292(d) stipulates that the total amount of the refund under Texas Tax Code, §151.4292 for a calendar year shall be equal to the lesser of:

--the amount from Texas Tax Code, §151.4292(c) for the calendar year for each apprentice described by Texas Tax Code, §151.4292(b), but not to exceed the maximum number of apprentices allowed by Texas Tax Code, §151.4292(e); or

--the amount of sales and use taxes paid by the person during the calendar year.

Texas Tax Code, §151.4292(e) stipulates that a person may receive a refund in a calendar year for a maximum of:

--one apprentice; or

--not more than six apprentices if at least half are:

--foster children who have or are transitioning to independent living as described in Texas Family Code, §264.121;

--military veterans as defined by Texas Occupations Code, §55.001;

--military spouses as defined by Texas Occupations Code, §55.001; or

--women.

Texas Tax Code, §151.4292(f) requires the executive director to create an application for certification to receive a tax refund under Texas Tax Code, §151.4292. Those persons who wish to receive the tax refund shall apply to the executive director for certification under Texas Tax Code, §151.4292. Only persons certified under Texas Tax Code, §151.4292 by the executive director may apply to the comptroller for the refund set forth by Texas Tax Code, §151.4292.

Texas Tax Code, §151.4292(g) limits the executive director to providing certification for not more than 100 persons in a calendar year. If the number of applicants in a calendar year exceeds this limit, the executive director shall select applicants to certify using criteria set forth in Texas Tax Code, §151.4292(h).

Texas Tax Code, §151.4292(h) requires the executive director to adopt rules establishing merit-based criteria for selecting persons to certify for eligibility to apply to the comptroller for the tax refund under Texas Tax Code, §151.4292. The executive director must give preference to applicants who:

--offer qualifying apprenticeships in areas of Texas not designated by the United States Office of Management and Budget as metropolitan statistical areas; and

--provide training and skills development in emerging or developing occupational fields.

Texas Tax Code, §151.4292(i) requires the executive director to issue a certificate that confirms eligibility to apply for the tax refund to each person certified under Texas Tax Code, §151.4292(f).

Texas Tax Code, §151.4292(j) stipulates that a person must apply for the refund under Texas Tax Code, §151.4292 to the comptroller. The application must include the certificate issued by the executive director and any other information required by the comptroller.

Texas Tax Code, §151.4292(k) requires the executive director to prepare and deliver a report that evaluates the effectiveness of the Tax Refund Pilot Program on employment outcomes and earnings for apprentices with respect to the refunds that are granted under Texas Tax Code, §151.4292. The report must recommend whether the program should be "continued, expanded, or terminated." The report must be delivered to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each legislative standing committee with primary jurisdiction over taxation, no later than September 1, 2024.

Texas Tax Code, §151.4292(l) states that a person applying for a refund under Texas Tax Code, §151.4292 shall provide to the executive director such information requested to prepare the report required by §151.4292(k).

Texas Tax Code, §151.4292(m) stipulates that the section shall expire December 31, 2026.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. TAX REFUND PILOT PROGRAM FOR CERTAIN PERSONS WHO EMPLOY APPRENTICES

TWC proposes new Subchapter A as follows:

#### Section 839.10. Purpose and Goal

New §839.10 states the purpose and goal for Chapter 839, Subchapter A.

#### Section 839.11. Definitions

New §839.11 defines the terms used in Chapter 839, Subchapter A.

#### Section 839.12. Tax Refund Pilot Program Provisions

New §839.12 states that TWC's executive director shall provide certificates for individuals eligible to apply for tax refund under Chapter 839, Subchapter A. Section 839.12 also describes limitations on the amount of such refund that each eligible person may qualify for under Chapter 839, Subchapter A, including that such refund shall not total more than the sales and use tax owed for previous year.

#### Section 839.13. Eligibility for Persons Employing Apprentices

New §839.13 states that only those active apprentices may be considered who were engaged with an employer for not less than seven months in the prior year (and not more than four total years) for which the employer is applying for the tax refund.

#### Section 839.14. Application for Certification

New §839.14 describes the process for which persons may apply for certification through TWC. Section 839.14 also states that only applications received from January 1 through March 31 each year will be reviewed for certification.

#### Section 839.15. Certification of Eligibility

New §839.15 describes merit-based criteria to be used by TWC's executive director. Section 839.15 states that TWC will review applications from April 1 through May 31 each year. Section 839.15 also describes the delivery of the report on TWC-certified persons to the comptroller, on June 1 each year.

#### Section 839.16. Limitations

New §839.16 states that TWC's executive director may certify up to 100 persons for eligibility for tax refund under Chapter 839, Subchapter A each year. Section 839.16 clarifies that a person may be certified with one apprentice each year, or up to six if not less than half of such apprentices are included in a listed priority category.

#### Section 839.17. Tax Refund Pilot Program Expiration

New §839.17 states that Texas Tax Code, §151.4292 expires on December 31, 2026.

### PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

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

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to establish a tax refund pilot program to implement SB 1524.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

#### Government Growth Impact Statement

TWC determined that during the first five years the rules will be in effect, they will not:

- create or eliminate a government program;
- require the creation or elimination of employee positions;
- require an increase or decrease in future legislative appropriations to TWC;
- require an increase or decrease in fees paid to TWC;
- create a new regulation;
- expand, limit, or eliminate an existing regulation;
- change the number of individuals subject to the rules; and
- positively or adversely affect the state's economy.

#### Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the

proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide a sale and use tax refund to certain persons who employ apprentices enrolled in a qualifying apprenticeship, as set forth in Texas Tax Code, §151.4292.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

#### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the policy concept regarding the new rules to the Boards for consideration and review on March 22, 2022. TWC also conducted a conference call with Board executive directors and Board staff on March 25, 2022, to discuss the policy concept. During the rule-making process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

#### PART V. PUBLIC COMMENT

Comments on the proposed new rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) and must be received no later than August 22, 2022.

#### PART VI.

#### STATUTORY AUTHORITY

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement SB 1524, which added Texas Tax Code, §151.4292, Tax Refund Pilot Program for Certain Persons Who Employ Apprentices.

##### §839.10. Purpose and Goal.

(a) The purpose of this subchapter is to establish rules for the Tax Refund Pilot Program in accordance with Texas Tax Code, §151.4292.

(b) The goal of this subchapter is to implement a tax refund pilot program to provide a sales and use tax refund to certain persons who employ apprentices enrolled in a qualifying apprenticeship, as set forth in Texas Tax Code, §151.4292.

##### §839.11. Definitions.

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

(1) Agency--The unit of state government established under Texas Labor Code, Chapter 301 that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title

4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in this subchapter.

(2) Apprentice--A participant in a qualifying apprenticeship as defined in this section.

(3) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code, §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in this subchapter.

(4) Comptroller--The comptroller of public accounts of the State of Texas, as defined under Texas Government Code, Chapter 403.

(5) Executive director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include an individual delegated by the executive director to perform a specific function on behalf of the executive director.

(6) Military spouse--A person who is married to a military service member, as defined under Texas Occupations Code, Chapter 55.

(7) Military veteran--A person who has served on active duty and who was discharged or released from active duty, as defined under Texas Occupations Code, Chapter 55.

(8) Non-metro area--Any area that is not included in a metropolitan statistical area designated by the United States Office of Management and Budget.

(9) Person--A "person" is:

(A) a resident of this state;

(B) a business entity located in this state;

(C) a governmental subdivision located in this state; or

(D) a public or private organization located in this state that is not a state agency.

(10) Qualifying apprenticeship--An apprenticeship training program registered with United States Department of Labor (DOL) and qualified to receive funding provided through the Agency as set forth in Texas Education Code, Chapter 133, or certified as an Industry-Recognized Apprenticeship Program (IRAP) by a Standards Recognition Entity.

(11) Standards Recognition Entity--A third-party entity recognized by DOL as qualified to recognize apprenticeship programs as IRAPs.

(12) Transitioning foster youth--A youth who has or is currently transitioning to independent living as described in Texas Family Code, §264.121.

##### §839.12. Tax Refund Pilot Program Provisions.

(a) The Tax Refund Pilot Program for Certain Persons Who Employ Apprentices is jointly carried out by the comptroller, executive director, and the Agency.

(b) The executive director shall provide certificates to eligible persons, in accordance with §§839.13 - 839.15 of this subchapter (relating to Eligibility for Persons Employing Apprentices; Application for Certification; and Certification of Eligibility). Such certificates must be included by eligible persons who apply for a tax refund with the comptroller in accordance with Texas Tax Code, §151.4292.

(c) Subject to the limitations in subsection (d) of this section and §839.16(a) of this subchapter (relating to Limitations), the amount

of the refund available to eligible persons in a calendar year in connection with each apprentice is \$2,500.

(d) The total amount an eligible person may be refunded through the Tax Refund Pilot Program in a calendar year shall be equal to the lesser of:

(1) the amount of sales and use taxes paid by the person during the calendar year; or

(2) the amount listed in subsection (c) of this section for each eligible apprentice employed.

§839.13. Eligibility for Persons Employing Apprentices.

(a) A person may apply to the Agency for certification if the person employs at least one apprentice in a qualifying apprenticeship for not less than seven months in the calendar year.

(b) A person shall not be determined eligible for certification by the executive director for any apprentice first employed prior to January 1, 2022.

(c) An apprentice is not considered to be employed for purposes of this subchapter:

(1) after the earlier of:

(A) the fourth anniversary of employment in the position; or

(B) the conclusion of the term of the qualifying apprenticeship position; or

(2) if the apprentice was employed in another position by the employer immediately before beginning employment in the qualifying apprenticeship position.

§839.14. Application for Certification.

(a) The Agency shall develop an application for certification under the Tax Refund Pilot Program.

(b) The application shall include such information determined necessary by the executive director to certify eligible persons under this subchapter.

(c) To be considered for certification under this subchapter by the executive director, eligible persons shall submit the application in such manner as required by the Agency.

(d) Beginning in 2023, the Agency shall accept applications for certification from eligible persons employing apprentices between January 1 and December 31 of the previous calendar year. Only applications received between January 1 and March 31 each year shall be accepted by the Agency for the previous calendar year.

§839.15. Certification of Eligibility.

(a) The executive director shall adopt merit-based criteria, described in subsection (b) of this section, for the selection of eligible persons. These criteria shall be used if more than 100 eligible applicants are received by the Agency in a calendar year.

(b) When determining those persons who will be certified in a calendar year from a group larger than 100 applicants, the executive director shall give preference to applicants who:

(1) offer qualifying apprenticeships in non-metro areas of this state; and

(2) provide training and skills development in fields defined by the Agency as emerging or developing in Texas.

(c) In addition to those criteria identified in subsection (b) of this section, the executive director may give preference to applicants who:

(1) employ at least one apprentice who is included in one or more population identified in §839.16(a)(2)(A) - (D) of this subchapter (relating to Limitations); and

(2) submit applications for apprentices who have not been previously certified under this section.

(d) Applications received in accordance with §839.14 of this subchapter (relating to Application for Certification) will be reviewed beginning April 1 through May 31. Persons will be informed of certification or denial of eligibility in a manner determined by the Agency.

(e) The executive director, or appropriate designated staff, shall issue a report to the comptroller each year on June 1 that identifies each person certified under this subchapter as eligible to apply for the tax refund described in §839.13 of this subchapter (relating to Eligibility for Persons Employing Apprentices). The report shall be delivered in a manner determined by the Agency.

§839.16. Limitations.

(a) The maximum number of apprentices employed by a person who may be certified under this subchapter to apply to the comptroller for a tax refund in a calendar year is:

(1) one; or

(2) up to six apprentices, provided at least half of those individuals are:

(A) transitioning foster youth;

(B) military veterans;

(C) military spouses; or

(D) women.

(b) The executive director may certify up to 100 persons in a calendar year.

§839.17. Tax Refund Pilot Program Expiration.

Texas Tax Code, §151.4292, Tax Refund Pilot Program for Certain Persons Who Employ Apprentices, expires on December 31, 2026.

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 July 5, 2022.

TRD-202202512

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 21, 2022

For further information, please call: (512) 756-3550



**SUBCHAPTER B. GRANTS TO FACILITATE PARTICIPATION IN REGISTERED APPRENTICESHIP PROGRAMS BY CERTAIN VETERANS AND MILITARY PERSONNEL**

**40 TAC §§839.20 - 839.23**

The Texas Workforce Commission (TWC) proposes new Chapter 839, relating to Apprenticeship Programs - Additional, including the following subchapter:



Subchapter B. Grants to Facilitate Participation in Registered Apprenticeship Programs by Certain Veterans and Military Personnel, §§839.20 - 839.23

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 839, Subchapter B rules is to implement Senate Bill (SB) 337 from the 87th Texas Legislature, Regular Session (2021).

SB 337 amended Texas Labor Code, Chapter 302, Subchapter A by adding §302.00341, Grants to Facilitate Participation in Apprenticeship Training Programs by Certain Veterans and Military Personnel.

Texas Labor Code, §302.00341(a) defines "apprenticeship training program" and "nonprofit organization."

Texas Labor Code, §302.00341(b) requires TWC to "develop and administer a program under which the commission may award grants to one or more nonprofit organizations duty military service members who are transitioning into civilian employment."

Texas Labor Code, §302.00341(c) stipulates that a grant awarded under Texas Labor Code, §302.00341 may be used only to recruit or assist veterans or transitioning service members.

Texas Labor Code, §302.00341(d) requires TWC to adopt rules to administer this grant. These rules must include a process to verify that state funds awarded to a nonprofit organization under Texas Labor Code, §302.00341 are used appropriately.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

##### SUBCHAPTER B. GRANTS TO FACILITATE PARTICIPATION IN REGISTERED APPRENTICESHIP PROGRAMS BY CERTAIN VETERANS AND MILITARY PERSONNEL

TWC proposes new Subchapter B as follows:

###### §839.20. Purpose and Goal

New §839.20 states the purpose and goal for Chapter 839, Subchapter B.

###### §839.21. Definitions

New §839.21 defines the terms related to Chapter 839, Subchapter B.

###### §839.22. Grants to Facilitate Participation in Registered Apprenticeship Programs

New §839.22 states that TWC may provide grant(s) to nonprofit organization(s) that apply for such through a TWC-developed application, to facilitate participation in registered apprenticeships by recruiting and assisting veterans or transitioning services members. Grant recipients shall repay any and all funds provided by grant if not used for these purposes.

###### §839.23. Recruitment and Assistance Services

New §839.23 states that applicants shall include cost estimates in grant applications. Grant recipients shall provide receipts for actual costs. The new section describes recruitment and assistance services allowable under grant(s) and includes an exception for use of up to 15 percent of the grant award for funds required to pay staff salaries dedicated to recruitment or assistance activities under such grant.

#### PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

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

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

##### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to establish the Veterans Apprenticeship Training Grant Program to implement SB 337 which amended Texas Labor Code, Chapter 302, Subchapter A by adding §302.00341, Grants to Facilitate Participation in Apprenticeship Training Programs by Certain Veterans and Military Personnel.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

##### Government Growth Impact Statement

TWC determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- may affect future legislative appropriations to TWC, because this program has only been funded for the first two years;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

#### Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to increase the number of veterans who are enrolled in and successfully complete apprenticeship training programs in Texas.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

#### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the policy concept regarding these new rules to the Boards for consideration and review on March 22, 2022. TWC also conducted a conference call with Board executive directors and Board staff on March 25, 2022, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

#### PART V. PUBLIC COMMENT

Comments on the proposed new rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than August 15, 2022.

#### PART VI.

#### STATUTORY AUTHORITY

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement SB 337, which added Texas Labor Code, §302.00341, Grants to Facilitate Participation in Registered Apprenticeship Programs by Certain Veterans and Military Personnel.

#### §839.20. Purpose and Goal.

(a) The purpose of this subchapter is to establish the grant program in Texas Labor Code, §302.00341, Grants to Facilitate Participation in Apprenticeship Training Programs by Certain Veterans and Military Personnel.

(b) The goal of this subchapter is to establish a program to award grants to facilitate the participation of certain veterans and military personnel in apprenticeship training programs, as set forth in Texas Labor Code, §302.00341.

#### §839.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings.

(1) Active duty--As defined under Texas Occupations Code, Chapter 55, active duty means 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 in Texas Government Code, §437.001, or similar military service of another state.

(2) Agency--The unit of state government established under Texas Labor Code, Chapter 301 that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in this subchapter.

(3) Assistance--Provision of services designed to promote continued participation in a registered apprenticeship program by military veterans or transitioning service members.

(4) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code, §301.002, that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in this subchapter.

(5) Grant recipient--A nonprofit organization that is awarded funding under this subchapter.

(6) Military veteran--An individual who has served on active duty and who was discharged or released from active duty, as defined under Texas Occupations Code, Chapter 55.

(7) Nonprofit organization--An organization exempt from federal income taxation under Internal Revenue Code, §501(a), as an organization described by Internal Revenue Code, §501(c)(3).

(8) Recruitment--Provision of services to promote enrollment in a registered apprenticeship program by military veterans or transitioning service members.

(9) Registered apprenticeship program--A training program that provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in a trade that has been certified as an apprenticeable occupation by the United States Department of Labor Office of Apprenticeship, as defined under Texas Education Code, Chapter 133.

(10) Transitioning service member (TSM)--An individual in active duty status (including separation leave) who is within 24 months of retirement or 12 months of separation from military service.

#### §839.22. Grants to Facilitate Participation in Registered Apprenticeship Programs.

(a) The Commission may award grants to one or more non-profit organizations that facilitate the participation in registered apprenticeship programs of military veterans and TSMs.

(b) A nonprofit organization may apply to the Agency for a grant award under this subchapter. An application, developed by the Agency for the purpose of this subchapter, shall include such information necessary to determine eligibility for such award.

(c) A grant awarded under this subchapter may only be used to recruit or assist veterans who have received an honorable discharge or a general discharge under honorable conditions and TSMs whose statement of service letter indicates an honorable discharge or a general discharge under honorable conditions to participate in a registered apprenticeship program in accordance with §839.23 of this subchapter (relating to Recruitment and Assistance Services).

(d) A grant recipient shall provide such information determined by the Agency to be necessary to determine that the grant funds are used in compliance with subsection (c) of this section. Such information shall be provided in a manner and at a frequency determined by the Agency.

(e) If funds awarded under this subchapter are not used in accordance with subsection (c) of this section, the grant recipient shall be required to repay any funds not used in accordance with subsection (c) of this section.

§839.23. Recruitment and Assistance Services.

(a) A nonprofit organization that applies under §839.22(b) of this subchapter (relating to Grants to Facilitate Participation in Registered Apprenticeship Programs) shall include cost estimates for services included in this section.

(b) A nonprofit organization shall provide actual costs and receipts for any services included in this section in accordance with §839.22(d) of this subchapter.

(c) Recruitment services, specific to military veterans and TSMs, allowable under this subchapter, may include:

(1) outreach materials and services, which may include flyers, web services, or other promotional services; or

(2) other costs related to recruitment, if such costs are approved by the Agency prior to those costs being incurred.

(d) Assistance services, provided to military veterans and TSMs, allowable under this subchapter, may include:

(1) tuition payments for the education portion of registered apprenticeship programs;

(2) mentoring services;

(3) support services, as set forth in Texas Government Code, §2308.312(c)(6); or

(4) other assistance services, if such costs are approved by the Agency prior to those costs being incurred.

(e) Funds may be used for staffing costs only if:

(1) staff time is dedicated to subsections (c) and (d) of this section; and

(2) such costs do not exceed 15 percent of the total grant awarded under this subchapter.

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 July 5, 2022.

TRD-202202513

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 21, 2022

For further information, please call: (512) 756-3550



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 217. VEHICLE TITLES AND REGISTRATION

##### SUBCHAPTER F. MOTOR VEHICLE RECORDS

###### 43 TAC §§217.122 - 217.133

INTRODUCTION. The Texas Department of Motor Vehicles proposes amendments to 43 TAC §§217.122 - 217.130 and proposes new §§217.131 - 217.133, concerning the disclosure of personal information from the department's motor vehicle records. The amendments and new sections are necessary to: (i) implement amended Transportation Code §§730.003, 730.006, 730.007, 730.013, 730.014, and 730.016 and new §§730.0121, 730.0122, and 730.0123 under Senate Bill 15, 87th Legislature, Regular Session (2021), also known as the Texas Consumer Privacy Act Phase I (SB 15); and (ii) make other changes necessary as determined by the department for clarity and effective implementation of Transportation Code Chapter 730.

EXPLANATION. Transportation Code Chapter 730 implements 18 U.S.C. Chapter 123, also known as the Driver's Privacy Protection Act (DPPA), and protects the interest of individuals in their personal privacy by limiting the disclosure and use of personal information contained in motor vehicle records. SB 15 amended multiple existing sections of Transportation Code Chapter 730 and created three new sections, including creating additional criminal offenses and increasing the punishment for an existing criminal offense.

SB 15 created a new definition for "authorized recipient" and added additional examples to the existing definition of "personal information" in Transportation Code §730.003. The proposed amendments in §217.122 incorporate Transportation Code Chapter 730's definitions, add nonsubstantive changes for clarity, and remove definitions for terms that are defined under Transportation Code §730.003.

SB 15 amended Transportation Code §730.006 by clarifying that the department must disclose information to the person who is the subject of the motor vehicle record. The proposed amendments to §217.123(a)(4), in part, clarify the people who can file a request for personal information to be consistent with Transportation Code §730.006.

SB 15 amended the list of permitted disclosures in Transportation Code §730.007(a)(2) by both amending existing permitted uses and creating new permitted uses. The amendments to §730.007(a)(2) are, in part, incorporated in the proposed amend-

ments to §217.125, regarding additional documentation required to establish a requestor's permitted use.

In Transportation Code §730.007(a-1), SB 15 created a new allowance for disclosure--the department may disclose personal information without first receiving a request for information when (1) referring potential violations to law enforcement agencies and other regulatory agencies, (2) responding to subpoenas or discovery requests, and (3) communicating with a county tax assessor-collector regarding an audit or investigation. Proposed amendments to §217.123 address requests from law enforcement agencies and subpoenas and discovery requests. SB 15 also created a requirement in Transportation Code §730.007(g) that a person in possession of personal information from department motor vehicle records must respond to inquiries from the department regarding compliance with laws that apply to the disclosed personal information not later than the fifth business day after the submission of the department's request, which is addressed in §217.128.

SB 15 added Transportation Code §730.0121, requiring the department to adopt rules related to the deletion of any personal information received from the department, should the requestor become aware that they do not meet the definition of an "authorized recipient." Proposed §217.131 and §217.132 address the notices and processes related to the required deletion of information.

New Transportation Code §730.0122 prohibits a person from selling personal information to persons who are not authorized recipients, making such a sale a misdemeanor offense punishable by a fine up to \$100,000. Proposed amendments to §§217.126, 217.127, 217.128, and 217.130 remove "resale" from the rules for consistency with amendments in SB 15; and proposed amendments to §217.123 address repercussions to requestors who are convicted of violations of Transportation Code Chapter 730.

SB 15 also amended Transportation Code §730.013, removing references to "resale," limiting redisclosure to only third parties that have a permitted use, adding a requirement for authorized recipients to notify any third parties to whom they redisclose information that the third party may not redisclose that information to anyone who does not have an authorized use, and increasing the maximum monetary penalty for criminal sanctions related to that section from \$25,000 to \$100,000. The amendments to §730.013 are addressed in the proposed amendments to §§217.126, 217.127, 217.128, and 217.130.

SB 15's amendments to Transportation Code §730.014 created contract terms for situations where the department discloses personal information in bulk under a contract, required that the department monitor requestors' compliance with Transportation Code Chapter 730, and provided the department the authority to cease disclosing in the case of a contract violation. SB 15 states the department must include the following in a contract to provide a requestor access to personal information in motor vehicle records in bulk: (1) a requirement that the requestor post a performance bond, (2) a prohibition on the sale or redisclosure for the purpose of marketing extended vehicle warranties by telephone, (3) a requirement that the requestor provide proof of general liability and cyber-threat insurance coverage, (4) a requirement that the requestor notify the department not later than 48 hours after the discovery of a breach, (5) a requirement that the requestor include in each contract with a third party that receives the personal information from the requestor that the third party must comply with federal and state laws regarding

the records, (6) a requirement that the requestor protect the personal information under industry standard security measures, and (7) a requirement that the requestor submit an annual report of all third parties to which personal information is redisclosed and the purpose of the redisclosure.

SB 15 added a requirement in Transportation Code §730.014 that the department include in a disclosure of bulk records at least two records that are created solely for monitoring compliance with Transportation Code Chapter 730. New Transportation Code §730.014(f) requires the department to designate an employee to be responsible for monitoring compliance with Transportation Code Chapter 730, referring potential violations to law enforcement, and making recommendations to the department on the eligibility of a person to receive personal information under Transportation Code §730.016. Lastly, new Transportation Code §730.014(g) states that if the department determines a person has violated a term of a contract for disclosure of personal information, the department may cease disclosing personal information to the person and allow the person an opportunity to remedy the violation and resume receiving personal information. SB 15's amendments to Transportation Code §730.014 are addressed by proposed amendments to §§217.122, 217.123, 217.126, 217.127, 217.128, 217.129, and new §217.133.

Finally, SB 15 amended Transportation Code §730.016, regarding ineligibility to receive, retain, or redisclose personal information. SB 15's amendments to Transportation Code §730.016(a), in part, require that persons convicted of a violation of Transportation Code Chapter 730 or any related rules must cease redisclosing personal information received under the chapter and delete all personal information received from the department not later than one year after the date of conviction. The amendments to Transportation Code §730.016 are addressed in §217.123 and §217.131.

The department posted an informal draft of amendments to Chapter 217, Subchapter F, for public comment on the department's website on December 17, 2021, with comments due January 17, 2022. The department appreciates all the serious consideration from the submitted comments.

The department recognizes that authorized recipients, particularly law enforcement agencies, frequently need to receive personal information as soon as possible. The department analyzed its current processes for disclosing motor vehicle records to evaluate whether there are any inefficiencies. The department's processes for disclosing motor vehicle records to law enforcement requestors provide multiple ways to submit a request: by email, mail, or in-person at one of the department's Regional Service Centers. The proposed amendments and new sections provide clarity for the purposes of readability and ease of compliance with department processes, while maintaining the department's duty to diligently protect the personal information of Texans. Proposed amendments to §217.123 focus, in part, on new process efficiencies for law enforcement requests, to allow the department to assist law enforcement agencies with making their requests and promptly provide personal information under the parameters of Transportation Code Chapter 730.

The following paragraphs address the amendments in this proposal.

Section 217.122. The amendments to §217.122 add new subsections (a) and (b)(5) - (14); remove existing subsections (1), (3), and (4); and renumber existing subsections (2), (5), (6),

and (7). New §217.122(a) incorporates all definitions found in Transportation Code Chapter 730 for consistent interpretations between the corresponding statutes and rules. The incorporation of the statutory definitions necessitates the removal of duplicative terms in existing subsections (b)(1), (b)(3), and (b)(4), to avoid any unintended conflicts. The remaining existing definitions are renumbered accordingly to (b)(1), (b)(2), (b)(3), and (b)(4).

The amendments to renumbered §217.122(b)(2) clarify the definition of "requestor" to include "this state" and "an agency of this state." The definition of "person" in Transportation Code §730.003(5) specifically excludes "this state or an agency of this state." The amendment to renumbered §217.122(b)(2) clarifies that the incorporation of the statutory definition of "person" does not modify who is permitted to submit a request for personal information to the department. The subchapter continues to apply to people, states, and agencies of this state equally as "requestors," unless specifically stated otherwise.

The amendments to renumbered §217.122(b)(3) clarify the definition of "service agreement." A service agreement is a contract between the department and a "requestor," under its amended definition. The amendments replace "individuals, businesses or governmental entities or institutions" with "requestor" as the description of who can enter into a service agreement with the department, because, under the its new definition, "requestor" includes individuals, businesses, or government entities or institutions. Service agreements always provide electronic access to motor vehicle records, so for clarity the term "electronic" is added to the definition and removed from §217.123, which includes regulations related to service agreements. The amendment changing "the department's" to "department" clarifies that a service agreement may provide access to some but not all the department's motor vehicle records, depending on the terms and conditions of the service agreement. A service agreement is one type of contract for access to department motor vehicle records. SB 15 created another type of contract for access to department motor vehicle records in Transportation Code §730.014, where the department provides a requestor access to personal information in motor vehicle records in bulk. The requirements in Transportation Code §730.014 do not apply to service agreements, because service agreements do not provide access to information in bulk. Service agreements are contracts to receive access to records under §217.123 (relating to Access to Motor Vehicle Records) where the department discloses personal information based upon requests for specific, individual motor vehicle records. The amendments to renumbered §217.122(b)(4) change the term "made" to "submitted" for consistency within the subchapter and to specify that a request can be submitted by mail as well as the listed electronic methods.

New §217.122(b)(5) defines the term "signature" to establish that any signature requirement in this subchapter can be met using an electronic signature, as defined by Transportation Code §501.172. The definition includes "to the extent the department accepts such electronic signature" to recognize that there may be subsets of or advancements in these types of electronic signatures that the department's technology may not be able to accept at the time of submission. New §217.122(b)(6) defines the term "Batch Inquiry" to identify one of the department's information products that provides a requestor access to non-bulk motor vehicle records. Entering into a service agreement to submit Batch Inquiries allows the requestor to submit requests for multiple, specific motor vehicle records simultaneously and receive the responses in a batch format. A Batch Inquiry is distinguish-

able from a request for information in bulk--a Batch Inquiry is a method of sending multiple requests for individual records simultaneously and then receiving the response associated with each request simultaneously; whereas a request for information in bulk is one request that will require the disclosure of bulk information. In a Batch Inquiry, each motor vehicle record that is disclosed is a separate disclosure. New §217.122(b)(7) defines the term "MVInet Access," to identify one of the department's information products that provides a requestor access to non-bulk motor vehicle records. MVInet Access provides the requestor access to query the department's motor vehicle registration and title database. To run a query in MVInet, the requestor must enter data associated with a specific motor vehicle record--a Texas license plate number, vehicle identification number, placard number, or document number. The MVInet system is not designed to return information from multiple motor vehicle records from a single search of the system, and therefore does not disclose personal information in bulk. Each search made in MVInet is a separate disclosure. To gain access to MVInet, a requestor must apply for and enter into a service agreement.

New §217.122(b)(8) defines the term "bulk" to implement SB 15's amendments to Transportation Code §730.014. SB 15 established required contract terms when the department provides a requestor access to personal information in motor vehicle records in bulk under a contract under Transportation Code §730.007. SB 15 also established a requirement that the department include at least two records that are created solely for monitoring compliance with Transportation Code Chapter 730 in any bulk disclosure. The new definition of "bulk" in §217.122(b)(8) establishes what types of disclosures are subject to the requirements for disclosures of personal information in bulk under Transportation Code §730.014. New §217.122(b)(8) establishes that a disclosure of at least 250 motor vehicle records containing personal information is "bulk." The minimum amount of 250 motor vehicle records coincides with Business and Commerce Code §521.053(i), which requires a person to provide notice to the Texas Attorney General of any breach of system security that involves at least 250 residents of this state. The "bulk" definition goes on to include examples of department information products that disclose records in bulk.

New §217.122(b)(9) defines the term "bulk contract" to implement SB 15's amendments to Transportation Code §730.014 that establish required contract terms when the department provides a requestor access to personal information in motor vehicle records in bulk under a contract under Transportation Code §730.007. The new definition clarifies the types of contracts that will contain the contract terms required by Transportation Code §730.014.

New §217.122(b)(10) defines the term "Master File" to identify one of the department's information products that provides a requestor access to personal information in department motor vehicle records in bulk. The Master File contains all the department's active and inactive registration and title records.

New §217.122(b)(11) defines the term "Weekly Updates" to identify one of the department's information products that provides a requestor access to personal information in department motor vehicle records in bulk. The Weekly Updates contains any new and renewed registrations and title records from the previous week.

New §217.122(b)(12) defines the term "Specialty Plates File" to identify one of the department's information products that provides a requestor access to personal information in department

motor vehicle records in bulk. The Specialty Plates File contains records on issued Texas specialty license plates.

New §217.122(b)(13) defines the term "eTAG File" to identify one of the department's information products that provides a requestor access to personal information in department motor vehicle records in bulk. The eTAG File contains records of new or updated eTAGs, vehicle transfer notifications, and plate-to-owner records.

New §217.122(b)(14) defines the term "Dealer/Supplemental File" to identify one of the department's information products that provides a requestor access to department motor vehicle records. The Dealer/Supplemental File is a pair of files that are disclosed jointly. One of the files contains information on licensed dealers and the other contains information from registration and title transactions processed by dealers with the department during the previous week. The Dealer/Supplemental File does not contain personal information protected under Transportation Code Chapter 730. The Dealer/Supplemental File is not a standalone information product; a requestor who wants to receive the Dealer/Supplemental File must also contract for the Weekly Updates, which is a bulk contract.

Section 217.123. The amendments to §217.123 improve readability and clarify the requirements for a request for motor vehicle records, for proof of a requestor's identity, and for an application for a service agreement. New subsections to §217.123 add new processes for law enforcement requestors, establish processes regarding bulk requests, and clarify that other regulated methods of legal compulsion are exempt from the section's form requirements. The amendments insert new subsections (c) and (d) between the existing subsections (b) and (c). Due to the insertion of the new subsections, existing subsection (c) is relettered accordingly to subsection (e). The amendments also remove existing subsection (d), move the content from existing subsection (e) to new subsection (e)(2), and add new subsections (f), (g), (h), and (i).

The amendments to §217.123(a) improve readability and clarify the general requirements for a request for personal information in department motor vehicle records. The amendments start by distinguishing requests made under §217.123(a) from requests made to access motor vehicle records in bulk, under the new §217.123(f). The amendments broaden the language from "on the form" to "in a form," to clarify the department's processes, which provide for one general request form and a second request form that is tailored to the permitted uses afforded to law enforcement agencies under Transportation Code Chapter 730. Amendments to §217.123(a) also include the following amendments that improve readability and are nonsubstantive: the removal of "Request for records," which is unnecessary; the relocation of the requirement that information be released only in accordance with the DPPA, Transportation Code Chapter 730, Government Code §552.130, and 43 Texas Administrative Code Chapter 217, Subchapter F from subsection (a) to subsection (i); and the removal of "at a minimum," which is unnecessary.

The amendments to §217.123(a)(2) improve readability and clarify the requirement that the requestor specifically identify the motor vehicle records they are requesting on their request form. For the department to properly evaluate the request under Transportation Code Chapter 730 and provide a prompt, responsive disclosure, the requestor must clearly identify the motor vehicle record they are seeking. If a request is unclear, then the department may ask the requestor for clarification under Government Code §552.222. The amendments to subsection (a)(2) specify

a nonexclusive list of common data points that the department often needs to locate a requested motor vehicle record. The amendments also add "plate" to the "Texas license plate number" data point, to make the term consistent with Transportation Code Chapter 504 and to avoid any confusion with a driver's license number issued under Transportation Code Chapter 521.

The amendments to §217.123(a)(3) modify the existing requirement for proof of identity to conform with statutory language more closely and to incorporate amended §217.123(b) and new §217.123(c). Subsections (b) and (c) allow for different types of proof of identity, depending on the requestor's permitted use under Transportation Code Chapter 730.

The amendments to §217.123(a)(4) improve the readability of the existing requirement that the requestor inform the department how the requestor qualifies to receive the requested personal information under Transportation Code Chapter 730. The nonsubstantive amendments change the language to conform with the Transportation Code §730.006 and §730.007 more closely. The amendments clarify that the requestor must establish the requestor's authorized use on their request form. The amendments establish paragraphs (a)(4)(A) - (C) to clarify that the requestor is only required to meet one of the existing authorized use options.

The amendments to §217.123(b) and the insertion of new §217.123(c) improve readability and specify the acceptable forms of proof of identity for this subchapter. Transportation Code Chapter 730 requires the department to protect personal information contained in its motor vehicle records and only authorizes disclosure of personal information under certain circumstances. To determine whether a request qualifies for disclosure, the department must verify the identity of the requestor. For most requestors, this proof is provided using standard photo identifications. But the department recognizes that requestors seeking information for a law enforcement agency's use often possess other reliable means of identification that are unique to law enforcement. Therefore, the amendments remove law enforcement requestors from existing subsection (b) and establish separate proof of identity requirements for requests from law enforcement agencies in the new subsection (c). The amendments to subsection §217.123(b) exempt requests that meet the requirements of new subsection (c), to establish the separate proofs of identity available to law enforcement requestors. The amendments improve the readability of subsection (b) by affirmatively stating the requirements and removing the surplus "identification required" and "document." The amendments to subsection (b) add allowances for "Texas Department of Public Safety Identification" and "North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement" to better conform with other Texas laws that require proof of identity. The amendments remove the allowance for a "copy of current law enforcement credentials if the requestor is a law enforcement officer" as those requests are addressed by the new subsection (c).

New §217.123(c) establishes proof of identity requirements for requests for personal information for use by law enforcement agencies. Law enforcement agencies have commented on §217.123's existing limitation to only accept law enforcement credentials as proof of identity from law enforcement requestors. Considering the time-sensitivity and public interest in law enforcement investigations, new §217.123(c) includes two new options for proof of identity for law enforcement requestors. The new options for law enforcement requestors increase flexibility

for the requestors while continuing to allow the department to meet its obligations under Transportation Code Chapter 730 to confirm that a requestor has a permitted use for the requested personal information and is not falsely holding themselves out to be associated with a law enforcement agency. The first of the three options, new §217.123(c)(1), continues the existing allowance for a law enforcement requestor to provide their law enforcement credentials as proof of identity. This option provides consistency for those that wish to continue following the existing processes. The second option, new §217.123(c)(2), allows law enforcement agencies to "electronically submit the request in a manner that the department can verify that the requestor is acting on behalf of a law enforcement agency." This option provides for multiple electronic submission methods--including methods that are currently available, such as submission using an email address issued and controlled by a law enforcement agency, and future methods that may be accomplished through technological advancements at the department. The third option, new §217.123(c)(3), provides the ability for the requestor's superior or commanding officer to affirm the requestor's identity. Unlike subsection (c)(2), subsection (c)(3) establishes a new option that can be used for in-person requests, should an officer wish to request records at a Regional Service Center without presenting their credentials.

New §217.123(d) establishes an exception for law enforcement requestors to the requirement in §127.123(a) that requests be made in writing. The department recognizes the public benefit of providing law enforcement requestors prompt assistance with their requests over the phone. New subsection (d) establishes a process for law enforcement agencies to provide required proof of identity for the people authorized to submit requests on behalf of the law enforcement agency before a request is made. The department will create a vetting form that law enforcement agencies can use to provide proof of identity. The department will review the submitted form and track which forms are complete and accepted. To ensure the information provided on the forms does not become inaccurate over time, a law enforcement requestor will be required to file a new form every 12 months, which must be approved by the department if the law enforcement requestor would like to continue submitting requests to the department verbally.

New §217.123(d) also establishes that the department may require the law enforcement requestor to confirm a verbal request in writing. If the department requires the law enforcement requestor to confirm their request in writing, the department will not disclose any personal information related to the request until confirmation in writing is received.

The amendments reletter the existing §217.123(c) to §217.123(e), improve the readability of the existing text, and clarify that a requestor must submit an application to enter into a service agreement. The content from existing subsection (e) was relocated to subsection (e)(2).

Relettered §217.123(e) addresses the process of entering into a service agreement. A service agreement is a contract that provides electronic access to department motor vehicle records through a method that does not disclose personal information in bulk. The amendments to relettered §217.123(e) remove "Electronic access." because it is an unnecessary restatement of an element of a service agreement.

The amendments to relettered §217.123(e)(1) improve readability and specify that a requestor must submit an application to enter into a service agreement with the department. Before the de-

partment will begin the process of drafting a service agreement, the requestor must provide reasonable assurances as to their identity and that the use of the personal information will be used only as authorized, under Transportation Code §730.007(a) and §730.012. The amendments to relettered §217.123(e)(1) remove "with a business or individual" and "written," as those terms are incorporated into the definitions of "requestor" and "service agreement" in proposed §217.122(b)(2) and (3), respectively. The removal of "with a business or individual" and "written," are nonsubstantive.

The amendments to relettered paragraphs (e)(1)(A) - (E) make the requirements for an application for a service agreement consistent with the requirements for a request under §217.123(a), to avoid any unintended consequences. The amendments to relettered paragraph (e)(1)(A) change the existing requirement for the requestor to provide their permitted use on the application for a service agreement to conform with §217.123(a)(4)(C) and Transportation Code Chapter 730. The amendments to relettered paragraph (e)(1)(A) are nonsubstantive.

The amendments to relettered §217.123(e)(1)(B) specify that an applicant for a service agreement must comply with Transportation Code §730.007(a)(1) and provide their name and address in the application. The requirement for an adjustable account in existing §217.123(c)(1)(B) is incorporated into relettered §217.123(e)(2) for clarity, since an adjustable account is a term or condition in a service agreement and not part of the application for a service agreement.

The amendments to relettered §217.123(e)(1)(C) require an applicant for a service agreement to provide proof of identity, as established under subsections (b) and (c). Since a service agreement is a contract regarding the disclosure of personal information, the department has a duty to confirm the identity of the contracting recipient. The amendments remove the existing §217.123(c)(1)(C) requirement for "termination and default provisions," as those are not part of an application for a service agreement. Executed service agreements will contain termination and default provisions, but it is not necessary for this rule to require them, as they are standard contract terms and conditions.

The amendments to relettered §217.123(e)(1)(D) clarify that a requestor applying to enter into a service agreement may be an individual, an organization, or an entity. If the requestor is an organization or entity, the amendments require an officer or director to sign the application on the entity's behalf. It is necessary for the department to know that an organization or entity's upper management understands the extent of the requestor's responsibility to protect the personal information contained in the department motor vehicle records before entering into a service agreement that provides electronic access to the department motor vehicle records.

The amendments remove the requirement in existing §217.123(c)(1)(E) and add a new requirement in relettered §217.123(e)(1)(E). The amendments to relettered §217.123(e)(1)(E) add a requirement that the application for a service agreement contain a certification that the statements made in the application are true and correct. The certification will not make the application more arduous on the part of the requestor and will provide assurances to the department that the requestor has confirmed that the statements made in the application are true and correct before submission. This certification is not required to be notarized.

The amendments remove the existing §217.123(c)(1)(E) requirement for a statement that the use of personal information will be in accordance with the DPPA, Transportation Code Chapter 730, and the permitted use specified in the service agreement to improve readability and make the rules more concise. The existing requirement is not something a requestor must provide in its application for a service agreement; rather, it is an unnecessary restatement of requirements under the DPPA and Chapter 730. The requirement that a requestor comply with the DPPA and Chapter 730 will continue to be required under a service agreement but the unnecessary restatement of laws is removed to avoid any unintended conflict with those laws.

The amendments remove existing §217.123(c)(1)(F), which requires that applications for service agreements contain "the statements required by subsection (a) of this section." Any "statements required by subsection (a)" that are required in an application for a service agreement are specifically included in the proposed amendments to the relettered §217.123(e). Therefore, the existing requirement in §217.123(c)(1)(F) is unnecessary and removed to avoid any confusion.

The amendments to relettered §217.123(e)(2) simplify the existing requirements related to adjustable accounts and the payment of fees under a service agreement by incorporating the requirements currently located in existing §§217.123(c)(1)(B), 217.123(c)(2)(B), and 217.123(e) into one subdivision. Service agreements include adjustable accounts established to pay fees incurred for the individual requests or searches made under the service agreement. The adjustable account requirements can be modified depending on the number of requests the requestor needs to submit. Additionally, some requestors are exempt from the payment of fees in this subchapter under §217.124(b) and (e), which negates the need for an adjustable account. The amendments to relettered §217.123(e)(2) combine all the existing regulations regarding adjustable accounts to one subdivision in the rule, making the rule more concise and improving readability.

The amendments remove existing §217.123(c)(2), which contains a separate set of regulations for service agreements with Texas governmental entities. In existing §217.123(c)(2), the only substantive distinctions between the regulations for a service agreement with a governmental entity and a service agreement with a requestor that is not a governmental entity was the existence of the adjustable account and the recognition that a governmental entity may have statutory authority to obtain social security numbers. The distinction that governmental entities may be exempt from paying fees is addressed by the amendments to §217.124(e), making the requirement in existing §217.123(c)(2)(B) unnecessary. The amendments remove existing §217.123(c)(2)(A)(v) which requires a statement citing to the governmental entity's authority to obtain social security number information, because it is an unnecessary restatement of existing law in Chapter 730. Section 730.003(6) defines "personal information" to include a social security number. If a governmental entity has authority to obtain social security numbers under Chapter 730, that authority is not modified by this rule. The removal of existing §217.123(c)(2) is nonsubstantive and avoids any potential conflict with existing laws.

The amendments remove existing §217.123(d), which addresses the ineligibility to receive personal information after a violation of a term or condition of the contract. Transportation Code §730.014 and §730.016 address the repercussions to a contracted authorized recipient should they violate their con-

tract, including the ineligibility to receive personal information. The amendments remove the existing §217.123(d) to avoid any conflict with these statutes.

The amendments remove existing §217.123(e) because the existing regulation regarding initial deposits and minimum balances in adjustable accounts is addressed by the amendments to relettered §217.123(e)(2).

New §217.123(f) implements SB 15's amendments to Transportation Code §730.014, which include contract requirements when an agency provides a requestor access to personal information in motor vehicle records in bulk under a contract under Transportation Code §730.007. New §217.123(f) specifies the requirement for a bulk contract; what must be present in an application for a bulk contract; when a conviction of an offense under Transportation Code Chapter 730 or a violation of 43 Texas Administrative Code Chapter 217, Subchapter F terminates a bulk contract; and what records the department may release under a bulk contract.

New §217.123(f) establishes that "[a] requestor seeking access to department motor vehicle records in bulk must enter into a bulk contract with the department." To ensure compliance with Transportation Code §730.014, the department will not disclose information in bulk outside of a contract.

New §217.123(f)(1) specifies that a requestor must submit an application for a bulk contract with the department before the department will initiate the contracting process and establishes the requirements for an application for a bulk contract. Before the department will begin the process of entering into a contract, the requestor must provide reasonable assurances as to their identity and that the use of the personal information will be used only as authorized under Transportation Code §730.007(a) and §730.012.

New paragraphs §217.123(f)(1)(A) through (f)(1)(E) establish the requirements for an application for a bulk contract, which conform with the requirements for an application for a service agreement under §217.123(e). New §217.123(f)(1)(A) incorporates the requirement under Transportation Code §730.007(a)(2) that a requestor must establish a permitted use before the department can disclose personal information from motor vehicle records. New §217.123(f)(1)(B) addresses the requirement under Transportation Code §730.007(a)(1) that a requestor must provide the requestor's name and address with the request. New §217.123(f)(1)(C) addresses the requirement from Transportation Code §730.007(a)(1) that a requestor must provide proof of identity with the request and incorporates the acceptable forms of proof of identity established in §217.123(b) and (c) to create consistency across all requests under this subchapter. New §217.123(f)(1)(D) specifies that the application must contain a certification that the statements made in the application are true and correct. This certification will provide assurances to the department that the requestor has confirmed that statements made in the application are true and correct before submission. This certification is not required to be notarized. New §217.123(f)(1)(E) establishes a signature requirement for the application. A requestor applying to enter into a bulk contract may be either an individual, an organization, or an entity. If the requestor is an organization or entity, the amendments require an officer or director to sign the application on the organization's or entity's behalf. It is necessary for the department to know that an organization's or entity's upper management understands the extent of the requestor's responsibility to protect the personal information contained in



the department's motor vehicle records before entering into a bulk contract.

New §217.123(f)(2) implements SB 15's requirements in Transportation Code §730.014(c)(1) and (c)(3). Transportation Code §730.014(c) requires requestors seeking a bulk contract to post a performance bond, and to provide proof of general liability and cyber-threat insurance coverage. New §217.123(f)(2) establishes that the requestor must provide proof that they have a performance bond and insurance coverage that meet the requirements of Transportation Code §730.014 before a bulk contract is executed. New §217.123(f)(2) allows a requestor to submit proof of a performance bond and insurance coverage after submitting an application to enter into a bulk contract to provide the requestor the flexibility to wait until their application is approved before expending the resources on these items. The requestor may choose to submit proof of the performance bond and insurance coverage requirements with their application, but the department will consider an application for a bulk contract complete without that proof if all requirements in §217.123(f)(1) are met.

New §217.123(f)(2)(A) implements Transportation Code §730.014(c)(1), requiring "that the requestor post a performance bond in an amount of not more than \$1 million." New §217.123(f)(2)(A) establishes that, for bulk contracts with the department, performance bonds must be in the amount of \$1 million and specifically tied to compliance with Transportation Code Chapter 730 and 43 Texas Administrative Code Chapter 217, Subchapter F. The department considered developing a process for varying the amount for the bond requirement; but determined that the requestors' obligations to protect the personal information in the department's motor vehicle records do not vary significantly between different bulk files and contracts. Because the performance bond addresses a consistent obligation to protect the personal information in the department's motor vehicle records, the rule cannot fairly and logically vary the bond amount.

New §217.123(f)(2)(B) implements Transportation Code §730.014(c)(3) requiring "that the requestor provide proof of general liability and cyber-threat insurance coverage in an amount specified by the contracting agency that is: (A) at least \$3 million; and (B) reasonably related to the risks associated with unauthorized access and use of the records." New §217.123(f)(2)(B) establishes that a requestor must provide proof of at least \$3 million in coverage that complies with Transportation Code §730.014(c)(3) to be consistent with the statute. The requirement provides requestors with the flexibility to evaluate their business and determine their insurance coverage needs, as long as they comply with Transportation Code §730.014(c)(3).

New §217.123(g) implements Transportation Code §730.016(a), which states that if a person is convicted of an offense under Transportation Code Chapter 730 or if the person violates a rule adopted by an agency relating to the terms or conditions for a release of personal information, then the person is ineligible to receive personal information under §730.007. New §217.123(g) establishes that if the contracted requestor is convicted of an offense under Transportation Code Chapter 730 or is found to have violated a rule under Subchapter F of Chapter 217, then the contract with that requestor is terminated as of the date of the court's final determination since the person would no longer be eligible to receive personal information under Transportation Code §730.016(a).

New §217.123(h) establishes an exemption from the form requirements in §217.123(a) for people seeking personal information using another regulated method of legal compulsion. Discovery requests, subpoenas, and other methods of legal compulsion have specific form requirements set out in law. New §217.123(h) clarifies that §217.123 does not create additional form requirements for these methods of legal compulsion. For example, if the department receives a proper request for production, under Rule 196.1 of the Texas Rules of Civil Procedure, the department will not also require the filing of a form required under §217.123(a).

New §217.123(i) incorporates the existing requirement in §217.123(a) to improve readability and clarity. Regardless of how a person requests personal information under §217.123, the department will only disclose personal information in accordance with Title 18 U.S.C. §2721 et seq., Transportation Code Chapter 730, Government Code §552.130, and Title 43 Texas Administrative Code Chapter 217, Subchapter F. The terms and conditions of a service agreement do not exempt the department from its obligations to protect personal and confidential information. If the department fails to meet its obligations to protect personal information under the DPPA, it "shall be subject to a civil penalty imposed by the Attorney General of not more than \$5,000 a day for each day of substantial noncompliance," under 18 U.S.C. §2723. If the department fails to meet its obligations regarding the disclosure of confidential information under Government Code Chapter 552, the department's officers or employees may be subject to criminal prosecution under Government Code Chapter 552, Subchapter I.

Section 217.124. The amendments to §217.124 improve readability and incorporate new terms defined by this rule proposal.

The amendments to §217.124(a) through (c) make nonsubstantive changes and improve readability by simplifying language and removing unnecessary punctuation. The amendments in §217.124(b) replace "entity" with "agency" to conform the reference to law enforcement requestors with Transportation Code Chapter 730. The amendments to §217.124(c) remove "For new contracts and renewals, the costs are" as these costs apply to all nonexempt requests, including requests under §217.123(a) that do not require a contract, making this language unnecessary.

The amendments remove §217.124(d)(5) to avoid an unintended conflict with Transportation Code §502.058 and §217.40(d), which authorize the owner of a vehicle for which the registration receipt has been lost or destroyed to obtain a duplicate receipt from the department or the county tax assessor-collector who issued the original receipt. Transportation Code §502.058 limits the disclosure of duplicate registration receipts to the owner of the vehicle, and therefore any release of any personal information on the disclosed receipt is under Transportation Code §730.006.

The amendments to §217.124(d) incorporate newly defined terms from §217.122. The amendments to subsection (d) are nonsubstantive and replace the existing descriptions of the department's information products with newly defined terms.

The amendments to §217.124(e) relate to the amendments made to existing §217.123(c)(2)(B) and are not substantive. Existing §217.124(e) references an exemption granted in existing §217.123(c)(2)(B) to government entities and toll project entities from paying certain fees for department motor vehicle records. The proposed amendments to §217.123 remove existing §217.123(c)(2)(B) because the exemption applies to

all requests by these entities under the subchapter, including requests for records under §217.123(a), requests for service agreements under relettered §217.123(e), and requests for bulk contracts under new §217.123(f). The exemption was moved to §217.124(e), to provide a consistent application of the exemption across the different types of requests.

Section 217.125. The amendments to §217.125 implement SB 15's amendments to Transportation Code §730.007(a)(2), which amended existing permitted uses and created new permitted uses. The amendments to §217.125 also clarify that the department may require the requestor to provide additional documentation after the initial request to provide reasonable assurances as to the requestor's permitted use. The amendments remove "Certain" from the title of the rule to clarify that the department's authority under Transportation Code §730.012 to request reasonable assurances that the use of the personal information will comply with Transportation Code Chapter 730 is not limited to certain permitted uses.

The amendments to §217.125(a) are nonsubstantive and ensure consistency with Transportation Code §730.003(5) and §730.007. The amendments to subsection (a) change the language from "the business or government entity" to "the organization, entity, or government agency," to conform with Transportation Code §730.003(5) and §730.007. The amendments avoid any unintended consequences or confusion that might be caused using similar, but not identical terms.

The amendments to §217.125(b) improve readability and clarify that the additional documents required by the subsection are only required when a request is made to the department. While Transportation Code §730.013 restricts the redisclosure of personal information to third parties who have a permitted use under §730.007, the department allows authorized recipients to determine their own business practices for performing their due diligence to determine whether redisclosure to a specific third party is permitted under Transportation Code Chapter 730. The amendments to §217.125(b) clarify the subsection only applies when the requestor is requesting personal information from the department. A person can request motor vehicle records with personal information redacted from the department without submitting additional documentation under §217.125(b).

Subsections 217.125(b)(1) through (11) tell a requestor what documents or information needs to be submitted to the department with a request. The required documents or information help the department to determine the requestor's permitted use and avoid the need for the department to seek clarification of the request under Government Code §552.222.

The amendments to §217.125(b)(1) through (b)(9) clarify that Transportation Code §730.007 does not require the inclusion of the documentation. Under the authority of Transportation Code §730.012, §217.125(b) requires the inclusion of the documentation as an attachment to the application that is submitted to the department. The amendments to §217.125(b)(1) through (b)(9) also correct the repeated omission of subsection (a) from the citations to the permitted uses under Transportation Code §730.007(a)(2).

The amendments to §217.125(b)(1) also add the word "personal" to conform with Transportation Code §730.007(a)(2)(C). The amendments to §217.125(b)(1) address SB 15's addition of Transportation Code §730.007(a-2), which requires a requestor under Transportation Code §730.007(a)(2)(C) to be a business that is "licensed by, registered with, or subject to

regulatory oversight by a government agency," by requiring a requestor to include proof of compliance with Transportation Code §730.007(a)(2)(C) with their request to the department.

The amendments to §217.125(b)(2) also make nonsubstantive changes to improve readability and conform the reference to "anticipation of litigation" with Transportation Code §730.007(a)(2)(D).

The amendments to §217.125(b)(4) also clarify that if a requestor supplies a license number provided by the Texas Department of Insurance, an out-of-state relevant regulatory authority, or for an insurance support organization, that license must be active at the time of the request for personal information.

The amendments to §217.125(b)(5) also clarify that if a requestor supplies a license number provided by the Texas Department of Licensing and Regulation or an out-of-state relevant regulatory authority, that license must be active at the time of the request for personal information.

The amendments to §217.125(b)(6) also clarify that if a requestor supplies a license number provided by the Texas Department of Public Safety or an out-of-state relevant regulatory authority, that license must be active at the time of the request for personal information.

The amendments to §217.125(b)(7) also clarify that if a requestor supplies a commercial driver's license, that license must be active at the time of the request.

The amendments to §217.125(b)(8) also incorporate SB 15's amendments to Transportation Code §730.007(a)(2)(J), which remove the term "private" and add "or another type of transportation project described by Section 370.003."

The amendments to §217.125(b)(9) also make nonsubstantive changes that improve readability by eliminating the unnecessarily repetitive reference to "the Fair Credit Reporting Act."

New §217.125(b)(10) addresses the new permitted use added by SB 15 under Transportation Code §730.007(a)(2)(L). New §217.125(b)(10) requires that the requestor provide proof that the requestor holds an active license as a manufacturer, dealership, or distributor at the time of the request for personal information as Transportation Code §730.007(a)(2)(L) authorizes the department to disclose personal information to a manufacturer, dealership, or distributor.

New §217.125(b)(11) addresses the new permitted use added by SB 15 under Transportation Code §730.007(a)(2)(M). New §217.125(b)(11) requires that the requestor provide proof that the requestor is licensed by or is subject to regulatory oversight by one of the entities listed in Transportation Code §730.007(a)(2)(M), since those are the only types of people to whom the department is authorized to disclose personal information under Transportation Code §730.007(a)(2)(M).

The amendments remove existing §217.125(c) to more consistently conform with Transportation Code §730.007(a)(2)(M). The only permitted use in Transportation Code §730.007 that is limited to a requestor that holds a license or authorization issued by the state of Texas is Transportation Code §730.007(a)(2)(M). To eliminate any conflict with Transportation Code §730.007, the amendments remove this section and add language addressing out-of-state licenses to subdivisions §217.215(b)(4), (b)(5), (b)(6), and (b)(10).

New §217.215(d) clarifies that the department may require information regarding proof of the requestor's permitted use un-

der Transportation Code Chapter 730, in addition to what is required under §217.125(b). Transportation Code §730.012(a) authorizes the department to require a requestor to provide reasonable assurance that the use of the personal information will be only as authorized. While §217.125(b) generally provides for what must be included with a request for personal information to the department, the new §217.215(d) clarifies that if the initial submission is insufficient or unclear, the department will request additional information as part of its due diligence to get the statutorily required proof that the requestor meets the requirements of their stated permitted use.

Section 217.126. The amendments to §217.126 remove the terms "resale," "resell," and "reselling" from the title and throughout the section to conform with SB 15's removal of the terms from Transportation Code §730.013. The amendments to §217.126(a) replace the term "provided" with "disclose," which is a nonsubstantive change for consistency throughout the subchapter and with Transportation Code Chapter 730. The amendments to §217.126(a) clarify that the regulation addresses only the department's motor vehicle records. Transportation Code Chapter 730 applies to other agencies in addition to the department, and an authorized recipient may receive information from more than one agency. Section 217.126(a) only addresses the redisclosure of personal information from the department's motor vehicle records, not personal information received from another source.

The amendments remove existing §217.126(b) to avoid unintended conflict or confusion between §217.126(b) and Transportation Code §730.013. Transportation Code §730.013 prohibits the redisclosure of personal information in the identical or substantially identical format. The redisclosure of "the entire motor vehicle records database in its complete format" under the existing §217.126(b) would be a prohibited "identical or substantially identical" disclosure under Transportation Code §730.013. Therefore, the amendments remove the unnecessary, existing §217.126(b).

The new §217.126(b) specifies that the department may request information regarding how an authorized recipient intends to vet any third parties to whom the authorized recipient will redisclose the department's personal information. Under Transportation Code §730.013, an authorized recipient can only redisclose the department's personal information to a person with a permitted use under §730.007. Additionally, under Transportation Code §730.014(f) the department is charged with monitoring compliance with Chapter 730. The new §217.126(b) specifies that the department may monitor compliance with Transportation Code §730.013 by asking the requestor questions regarding how the authorized recipient intends to complete its vetting process to determine the permitted use of a third party.

The amendments to §217.126(c) make nonsubstantive changes that improve readability and clarify that §217.126(c) only addresses the redisclosure of personal information from the department's motor vehicle records, not personal information received from another source.

The amendments remove the existing §217.126(d), which made authorized recipients responsible for any misuse of personal information committed by third parties to whom the authorized recipients redisclosed the personal information. The amendments remove subsection (d) to avoid confusion between it and the various statutorily created responsibilities of and repercussions to the authorized recipient. SB 15 established new courses of action that can be taken should a third party misuse personal infor-

mation, under Transportation Code §§730.0122 (regarding Sale Prohibited), 730.0123 (regarding Civil Suit), 730.013 (regarding Redisclosure; Offense), and 730.016 (regarding Ineligibility of Certain Persons to Receive, Retain, or Redisclose Personal Information). SB 15's amendments provide sufficient civil and criminal liability for authorized recipients and third parties, rendering subsection (d) unnecessary, and it is therefore removed by the amendments.

New §217.126(d) clarifies that any resale of personal information that happened before the effective date of SB 15 is still bound by the limitations of the section. While the amendments to §217.126 conform with SB 15's removal of "resale" from Transportation Code §730.013, new subsection (d) ensures that the amendments do not create an inadvertent regulatory loophole for personal information that was resold before SB 15's amendments went into effect.

Section 217.127. The amendments to §217.127 remove the terms "resell," "resold," and "sold" from the title and throughout the section, to conform with SB 15's removal of the term from Transportation Code §730.013.

The amendments to §217.127(a) clarify that this regulation addresses only the records an authorized recipient must maintain related to redisclosures of personal information from the department's motor vehicle records. Transportation Code Chapter 730 applies to other agencies in addition to the department, and an authorized recipient may receive information from more than one agency. Section 217.127(a) only addresses the redisclosure of personal information from the department's motor vehicle records, not personal information received from another source.

The amendments to §217.127(b)(1) improve readability and conform to Transportation Code §730.013, under which a third-party recipient is identified as a "person." The amendments to §217.127(b)(1) also require the records to reflect the third-party recipient's individual name and, when known, the name of the organization or entity receiving the records. This amendment addresses the inclusion of organizations and entities in Transportation Code §730.003(5)'s definition of "person" and the requirement under Transportation Code §730.013, that the authorized recipient maintain records "as to the person or entity receiving the information."

The amendments to §217.127(b)(2) are nonsubstantive, provide clarity, and improve readability. The amendments clarify Transportation Code §730.013's requirement that redisclosure be limited to persons with permitted uses under §730.007. The amendments remove the reference to §217.125(b), as those documents are only required when a person requests information from the department and replaces it with a more general description of "any documentation the authorized recipient received related to the person's permitted use." While an authorized recipient is not required to request the documents listed in §217.125(b), if the authorized recipient relies on documentation to confirm a third party's permitted use, the department may want to see the documentation when monitoring compliance under Transportation Code §730.014(f).

The amendments to §217.127(b)(3) are nonsubstantive, provide clarity, and improve readability. The addition of "under each permitted use" acknowledges that a person may qualify under more than one permitted use. Therefore, they may receive some records under one permitted use and other records under another permitted use. The amendments to §217.127(b)(3) ad-

dress the requirement under Transportation Code §730.013, that the authorized recipient maintain records "as to... the permitted use for which it was obtained."

The amendments to §217.127(b)(4) improve readability by removing the unnecessarily repetitive use of "the authorized recipient." Subsection (b)(4) describes one of the elements of an authorized recipient's records regarding redisclosure; since they are the authorized recipient's records there is no need to state that the statement contained in the records is the authorized recipient's statement.

The amendments to §217.127(b)(5) are nonsubstantive, provide clarity, and improve readability. The change from "the agreement" to "any agreement" clarifies that this section does not create a requirement that an authorized recipient have an agreement with a third party to redisclose personal information from the department's records. The amendments also clarify that the agreement referenced would be between the authorized recipient and a third party, and is therefore separate from a contract with the department. The amendments to §217.127(b)(5) continue the clarification throughout the subchapter that these records only pertain to the redisclosure of personal information from department motor vehicle records, not personal information received from another source.

New §217.127(c) clarifies that authorized recipients are required to maintain records for any resales that happened before the effective date of SB 15 for five years. While the amendments to §217.127 conform with SB 15's removal of "resale" from Transportation Code §730.013, authorized recipients are still required to maintain records of resales for five years. New subsection (c) ensures that the amendments do not create an inadvertent regulatory loophole for personal information that was resold before SB 15's amendments.

Section 217.128. The amendments to §217.128 remove the terms "resale" and "resell" from the title and throughout the section, conforming with SB 15's removal of the term from Transportation Code §730.013.

The amendments to §217.128(a) improve readability and clarify that the department may request information from an authorized recipient's records. The department is authorized to request information sufficient for the agency to determine compliance under Transportation Code §730.007(g). Information maintained under §217.127 is the type that could assist the department in determining compliance. The amendment specifies that the department may request those records, but the department is not limited to only requesting those records under Transportation Code §730.007(f). These amendments are nonsubstantive.

The amendments to §217.128(b) clarify the department's process to request the authorized recipient's records in writing. The amendments improve readability and are nonsubstantive.

The amendments to §217.128(c) remove the existing regulation regarding the deadline to reply to a request from the department to implement and avoid any conflict with SB 15's new Transportation Code §730.007(g). Transportation Code §730.007(g) established that a person must reply to a request for information regarding compliance from the department in five business days, making the existing requirement in §217.128(c) unnecessary.

The amendments to §217.128(c) incorporate SB 15's new Transportation Code §730.014(g). Transportation Code §730.014(g) allows the department to cease disclosing information under a contract when it determines an authorized

recipient has violated a term or condition of their contract with the department. If the department chooses to cease disclosing information, §730.014(g)(2) requires that the department allow the authorized recipient an opportunity to remedy the violation to resume the flow of information from the department. Failure to timely provide information requested by the department would be a violation of Transportation Code §730.007(g) and the contract with the department. New §217.128(c) specifies that if an authorized recipient fails to timely provide information requested by the department, the department may cease disclosing information under the contract. New §217.128(c) provides an authorized recipient 30 days to remedy the violation and provide the requested records. If the authorized recipient does not provide the requested records after 30 days, the department may terminate the contract. Thirty days is ample time to provide the department with information the authorized recipient is required to maintain under §217.127. Since compliance with this request should be relatively easy for an authorized recipient that is properly maintaining records, failure to do so for 30 days will likely indicate larger compliance issues. After 30 days of not responding the department's request, the violation is more significant. The department has an interest in terminating contracts where a contract holder has significantly violated a term or condition of the contract. For this violation, the department recognized that failure to provide the information after 30 days would be egregious and therefore would be grounds for termination of the contract.

The amendments remove existing §217.128(d) because it is unnecessary under the proposed amendments to §217.128(c).

The amendments remove existing §217.128(e) because it is unnecessary. Transportation Code §730.014(f) requires the department to designate an employee who is responsible for monitoring compliance with Transportation Code Chapter 730 and required contract terms, making existing §217.128(e) an unnecessary restatement of the department's statutory duty.

The amendments remove existing §217.128(f) because it is unnecessary under the proposed amendments to §217.128(c).

Section 217.129. The amendments to §217.129 improve readability, modify language to conform with statute, and clarify potential ambiguities. The amendments add "Personal Information Contained in" to the title of the section, to clarify that the rule only addresses a person's eligibility to receive the personal information contained in motor vehicle records under Transportation Code Chapter 730, and not motor vehicle records in their entirety. A person who is ineligible to receive personal information from motor vehicle records under Transportation Code Chapter 730 may still be authorized to receive information other than personal information from motor vehicle records under Government Code Chapter 552.

The amendments to §217.129(a) incorporate the department's authority to cease disclosing personal information under a contract under Transportation Code §730.014(g). The amendments specify that this subsection applies to both requests for information and contracts for access to the department's records. The methods of requesting and receiving information does not affect the department's obligation to protect the public's interest in personal information.

The amendments to §217.129(b) remove the term "of motor vehicle records" to limit the identification of the subject of the regulation to "authorized recipient," which SB 15 defined in Transportation Code §730.003(1-a). Conforming the description to the

defined term provides consistency and avoids potential confusion that can be caused by using differing terms to describe the same entities. The amendments modify "clause or term" to "term or condition" for readability and consistency. The amendments broaden multiple references from "a service agreement" to "a contract with the department to access motor vehicle records." These amendments incorporate the newly defined "bulk contracts," clarifying that this subsection applies to all contracts for motor vehicle records, not just service agreements. The amendments to §217.129(b) provide for consistent processes for all requests under contracts with the department.

The amendments to §217.129(c) broaden the subsection's use of a "service agreement" to a "contract with the department to access motor vehicle records." These amendments incorporate the newly defined "bulk contracts," clarifying that this subsection applies to all contracts for motor vehicle records, not just service agreements. The amendments to §217.129(c) provide for consistent processes for all requests under contracts with the department. The amendments also change the subsection's use of "a business, partnership, or entity" to "organization or entity" for consistency in the subchapter and with Transportation Code §730.002(5). The amendments to §217.129(c) also clarify that applying for a contract after termination is addressed by §217.130 and not Transportation Code §730.016 (regarding Ineligibility of Certain Persons to Receive, Retain, or Redisclose Personal Information; Offense). A contract termination on its own is not a basis for ineligibility under Transportation Code §730.016.

Section 217.130. The amendments to §217.130 broaden the section to apply to all contracts to access motor vehicle records, to incorporate the new "bulk contract," and improve readability.

The amendments to §217.130(a) improve readability and incorporate the new "bulk contracts" by replacing "service agreement" with "contract to access motor vehicle records." The amendments clarify that this rule applies to someone who has had a contract to access motor vehicle records with the department terminated in the past and now wants to enter into a new contract; it does not address instances where a requestor has had a different type of contract with the department previously terminated. The amendments also distinguish contracts that were terminated for failure to maintain a minimum balance, exempting those instances from the additional approval requirements. The department considers terminations for failure to maintain a minimum balance to be less egregious, and therefore it does not require the same process for approval after termination.

The amendments to §217.130(b) incorporate "for reapproval" to conform with existing language in subsection (a). The amendments to §217.130(b)(1) clarify that the requestor's remedial efforts must be specific to preventing "the unlawful disclosure of personal information from the department" as that is the information protected under Transportation Code Chapter 730. The amendments to §217.130(b)(2) clarify that the requestor will provide the department information regarding agreements where the requestor anticipates it will redisclose the department's personal information in the future. Since the requestor will likely not be in possession of personal information from department motor vehicle records at the time of the request for reapproval, any redisclosure agreement with a third party will be dependent upon the department's decision to reapprove. The amendments to §217.130(b)(3) remove the terms "reselling" and "resell" to conform with amendments in SB 15 to Transportation Code §730.013 and improve readability. The amendments to §217.130(b)(3) clarify that this section only addresses the re-

disclosure of the personal information from department motor vehicle records, not personal information received from another source. Transportation Code Chapter 730 applies to other agencies in addition to the department, and the department recognized that an authorized recipient may receive information from more than one agency. The amendments to subsection (b)(3) also remove the notification requirement regarding resale or redisclosure, as the stated elements are not necessary in every case. Should the department want to know information about a redisclosure after a new contract to access personal information is in place, the department is authorized to request that information under Transportation Code §730.007(g), making the requirement in §217.130(b)(3) unnecessary.

The amendments to §217.130(c) improve readability by removing "any of the terms of" because the language is unnecessary. The amendments to subsection (c) broaden the subsection's use of a "service agreement" to a "contract with the department to access motor vehicle records" for consistency within the subchapter. These amendments incorporate the newly defined "bulk contracts," clarifying that this subsection applies to all contracts for motor vehicle records, not just service agreements. The amendments change "inability" to "ineligibility" to conform with Transportation Code §730.016. Lastly, the amendments to subsection (c) clarify that failure to comply could result in a permanent inability to receive the department's motor vehicle records, as the department cannot limit the release of motor vehicle records from other agencies due to a violation of a contract with the department.

Section 217.131. New §217.131 implements SB 15's requirement in Transportation Code §730.0121 that "[a]n agency by rule shall require a requestor to delete from the requestor's records personal information received from the agency under this chapter if the requestor becomes aware that the requestor is not an authorized recipient of that information."

New §217.131(a) establishes a slightly modified definition of "requestor" for the purposes of this section. Section 217.122(b)(2) defines "requestor" as "a person, this state, or an agency of this state seeking personal information contained in motor vehicle records directly from the department." New §217.131(a) specifies that this section applies to any person or entity that has been a requestor in the past, regardless of whether the requestor is still actively seeking records from the department. This section allows the rule to more closely conform with Transportation Code §730.0121, while avoiding any unintended consequence of the definition of "requestor" under §217.122(b)(2).

New §217.131(b) establishes a 90-day timeframe in which a requestor will complete the deletions required by Transportation Code §730.0121. The department recognized that a person may not be able to immediately delete all the department's personal information from its system, so the amendments establish a reasonable period to complete the deletion. This deadline also balances the public's interest in unauthorized persons promptly deleting this protected information.

New §217.131(c) and (d) clarify when the timeframe under subsection (b) will begin by addressing when a requestor "becomes aware that the requestor is not an authorized recipient," under Transportation Code §730.0121. Subsection (b) establishes a notice requirement for the requestor--if the requestor becomes aware that they are not an authorized recipient without receiving notice from the department, then the requestor will notify the department of the date the requestor became aware. The department has an interest in knowing when a person becomes aware

that they are not an authorized recipient to monitor compliance with Transportation Code §730.0121's deletion requirements. If the department has questions regarding the date or what caused the requestor to become aware that it is not an authorized recipient, it can ask those questions under Transportation Code §730.007(g).

New §217.131(d) establishes that if the department determines that the requestor is not an authorized recipient before the requestor becomes aware, then the department will send a notice to the requestor. Under new subsection (c), the date of the department's notice to the requestor begins the timeline to delete the personal information in §217.131(b).

New §217.131(e) establishes that the requestor must notify the department when the information has been deleted. This will allow the department to monitor compliance with the 90-day deadline and to confirm compliance with Transportation Code §730.0121.

Section 217.132. New §217.132 addresses notice requirements for persons who have become ineligible to receive information under Transportation Code §730.016.

New §217.132(a) establishes a 15-day timeframe in which a person who has become ineligible to receive information under Transportation Code §730.016 must notify the department of the court's ruling that is the basis of the ineligibility. Cases involving violations of Transportation Code Chapter 730 and the associated rules adopted by the department are criminal cases, which may occur without extensive involvement from the department. It is imperative that the department know when a person becomes ineligible to take steps to ensure that the department does not make future disclosures to that person. Because the department may not be notified by the court when a ruling has been issued, this new rule puts the burden on the person in possession of personal information from the department to provide notice to the department.

New §217.132(b) establishes that the requestor must notify the department when the personal information previously disclosed has been deleted. This will allow the department to monitor compliance with Transportation Code §730.016's one-year deadline to delete the personal information from department motor vehicle records.

Section 217.133. New §217.133 implements SB 15's requirement under Transportation Code §730.014(c)(7) that an authorized recipient under a bulk contract must "annually provide to the agency a report of all third parties to which the personal information was disclosed under this section and the purpose of the disclosure." New §217.133 establishes the reporting period for the annual report, the required elements of an annual report, the process for requesting an extension for filing the annual report, the repercussions of failing to file the annual report, and the requirement for a final annual report at the termination of a contract.

New §217.133(a) establishes that an authorized recipient under a bulk contract must submit an annual report to the department electronically, using a form prescribed by the department. The department will provide a form for the annual report to aid contract holders in providing consistent and compliant reports. New §217.133(a) establishes the reporting period as a 12-month period that begins September 1st of the previous year. For example, the annual report due on October 1, 2026, would cover September 1, 2025, through August 31, 2026. The department considered other cyclical obligations its staff might have at var-

ious times of the year before choosing the 12-month period for the annual report. The October 1st due date should facilitate a prompt review by department staff of the significant amount of information the department anticipates it will receive from its bulk contract holders.

New §217.133(b) specifies what information is required in an annual report. New §217.133(b)(1) implements the requirement from Transportation Code §730.014(c)(7) that the annual report include the name of each third party to whom the contracted party provided personal information from department motor vehicle records. New §217.133(b)(1) requires both the name of the person who made the request and the business or entity for whom the request was made, if known. New §217.133(b)(1) addresses the requirement in Transportation Code §730.013(c)(1) that an authorized recipient maintain records "as to any person or entity" to whom the authorized recipient rediscloses personal information from department motor vehicle records. The information provided in the annual report is also necessary for the department to monitor compliance, as required under Transportation Code §730.014(f)(1), and to monitor whether people who are ineligible to receive personal information under Transportation Code §730.016 are acquiring the department's personal information from an authorized recipient.

New §217.133(b)(2) implements the requirement from Transportation Code §730.014(c)(7) that the annual report include the third party's permitted use under Transportation Code §730.007. Transportation Code §730.013(b) only allows the authorized recipient to redisclose "for a use permitted under Section 730.007"; therefore, every third party must inform the authorized recipient of their permitted use before personal information can be redisclosed. If a third party claims more than one permitted use, the annual report should reflect each permitted use.

New §217.133(c) requires an annual report to contain the signature of the requestor certifying that the statements made in the annual report are true and correct. If the requestor is an organization or entity, new §217.133(c) requires an officer or director to sign the annual report on the organization's or entity's behalf. While the information for the annual report may be assembled by other staff, new §217.133(c) requires the signature of an officer or director certifying that the information in the annual report is true and correct. The certification will ensure that the organization's or entity's upper management understands the requestor's use of the personal information from department motor vehicle records and whether the requestor's processes comply with Transportation Code Chapter 730. This certification will provide assurances to the department that the requestor has confirmed the information in the annual report is correct before submission. This certification is not required to be notarized.

New §217.133(d) addresses an authorized recipient's request for an extension to file the annual report. The department understands that circumstances may arise that affect an authorized recipient's ability to timely file an annual report. New §217.133(d) establishes a process for requesting an extension. A request for an extension must be made in writing, no later than September 1st, one month before the annual report is due. A request for an extension must include proof of an event beyond the control of the authorized recipient that is preventing the timely submission of the annual report. The department will consider the request and may grant an extension of up to two months, resulting in a due date as late as December 1st. Because the information for the annual report will be pulled from records that are required to be maintained by the authorized recipient under §217.127, gath-

ering the information is not expected to be an arduous task for the authorized recipient. If the authorized recipient is unable to file an annual report by December 1st, the department will evaluate possible repercussions under new §217.133(e).

New §217.133(e) establishes the possible repercussions for failing to timely submit an annual report or failing to properly request an extension for filing the annual report. Failing to timely submit the annual report is a violation of new §217.133 and the terms of a bulk contract. Under Transportation Code §730.014(g)(1), if the department determines a person has violated the terms or conditions of a contract, the department is authorized to cease disclosing personal information and allow the person to remedy the violation. New §217.133(e) establishes that if the authorized recipient fails to meet the annual report deadlines, the department may cease disclosing records under the bulk contract, under Transportation Code §730.014(g)(1). If the authorized recipient does not remedy the violation by December 1st, the department may terminate the bulk contract for a violation of new §217.133 and any associated terms or conditions of the contract.

New §217.133(f) establishes a requirement for a final report at the termination of a bulk contract. This requirement for a final report provides the department with information on any redisclosures that occurred since the authorized recipient filed their last annual report or since the execution of the contract, if the person has not previously filed an annual report. The requirement for a final report addresses the possibility of contract holders attempting to avoid the reporting requirements by terminating their bulk contract before October 1st. The deadline to submit the final report is 90 days after the date of the end of the contract, which should provide sufficient time to any contract holders that may be taking other steps to wind down their business. Failure to submit a final report will be a violation of §217.133, which may result in the person becoming ineligible to receive future personal information under Transportation Code §730.016.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments and new sections are in effect, there will be no significant fiscal impact to state or local governments resulting from the enforcement or administration of the proposal. The proposed amendments do not increase or decrease state revenues, and any changes to the cost of compliance will be insignificant.

The proposal may result in minor increases in costs associated with executing a modified form for requesting personal information, applying for a contract to access bulk records, or entering into a contract to access bulk records, but the completion of those forms, applications, and contracts is necessary to implement SB 15 and Transportation Code Chapter 730. Any proposed requirements for these forms, applications, and contracts will have a minimal impact on the existing cost of gathering and providing the required information that cannot be estimated. Under the proposal's new definition of bulk, some requests by state and local government may require a contract, where the same request under the existing subchapter would not have required a contract. The department evaluated the requests received from this fiscal year, and while it received some requests from local governments for records in bulk, most of those requests were related to issues the department was referring out to law enforcement. After SB 15, a referral to law enforcement is a disclosure under Transportation Code §730.007(a-1) and, therefore, would not require a bulk contract. Should a state or local government require a bulk contract, the impact will be limited to the time

needed to complete and submit the application and the contract itself, since Transportation Code §730.014 exempts state and local governments from the bond and insurance requirements. Any proposed requirements for the application or contract will have a minimal impact on the existing cost of gathering and providing the required information.

State and local governments may see an increase in cost related to the enactment of SB 15's annual report requirement under Transportation Code §730.014(c)(7), but the cost associated with §217.133 is not expected to be significant.

The proposal also reduces the burden for complying with requirements for forms, applications, and contracts imposed on state and local governments. Proposed amendments to increase readability and clarity will ease any burden associated with interpreting how to comply with requirements. Allowing for electronic signatures will allow state and local governments to submit requests electronically and reduce costs associated with printing and mailing request forms to the department when they are not required to pay fees for motor vehicle records. State and local governments are in the best position to estimate cost reductions related to electronic signing and submission of documents under §217.123, and §217.133. The proposal also reduces compliance costs to local law enforcement agencies by making it easier for those entities to request records from the department, specifically by allowing for additional options for proof of identity and creating a process for submitting verbal requests. Law enforcement agencies are in the best position to estimate the cost savings associated with these proposed new sections.

Roland D. Luna, Sr., Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Luna has also determined that, for each year of the first five years the proposed amendments are in effect, there are several public benefits anticipated because of the enforcement and administration of the proposal, as well as potential costs for persons required to comply with the proposal. The department drafted the proposal to maximize public benefits associated with protecting the interest of an individual's personal privacy under Transportation Code Chapter 730 while mitigating costs associated with compliance.

Anticipated public benefits.

The anticipated public benefits generally include (i) updates to the existing rules to comply with legislation enacted by SB 15; (ii) clarification of existing rules to facilitate compliance, implementation, and enforcement of these rules; and (iii) improvements to the processes for requesting personal information from department motor vehicle records.

*Compliance with legislation.* The anticipated public benefits of the proposed amendments and new sections include implementing SB 15 and ensuring that the department's rules are accurate and transparent by reflecting current Transportation Code Chapter 730. The proposed new sections that create additional options for requests from law enforcement agencies will benefit the public's interest in SB 15's focus on criminal offenses. The proposal also adds a new section addressing the public's interest in determining when a person who was previously thought to be authorized recipient of the department's personal information is not authorized under Transportation Code Chapter 730 and re-

quiring the deletion of any personal information already provided to that person.

*Clarification of existing rules.* Additionally, the anticipated public benefits of the proposed amendments that clarify or improve the readability and ease of understanding of existing rules include: (i) the use of consistent terminology throughout the subchapter; (ii) increased specificity in the subchapter's limitation to only address personal information from the department's motor vehicle records, not other sources; (iii) updated references and citations; (iv) increased clarity regarding the requirements when requesting or applying for contracts to access motor vehicle records; (v) the consolidation of duplicative regulations and removal of unnecessary regulations; (vi) increased clarity regarding when additional documentation establishing a person's permitted use may be required; and (vii) increased clarity regarding the process for requesting a subsequent contract for access to motor vehicle records after a previous contract was terminated.

*Improvements to processes for requests.* In addition to the increased ease of compliance provided by the increased clarity of the proposed amendments, the department anticipates the public will benefit from other proposed process improvements. The proposed amendments allow for electronic signatures on forms and applications, which should allow for easier electronic completion of required documents. The proposed amendments also clarify the existing two-step process for entering into a contract to access motor vehicle records, involving the initial application and then the contract execution. The increased visibility into the department's processes will limit confusion and processing costs on behalf of requestors.

Anticipated costs to comply with the proposal.

There are anticipated costs to the public associated with the proposed amendments and new sections, and these costs may be incurred (i) when providing reasonable assurances as to the requestor's permitted use, (ii) when entering into contracts to access motor vehicle records, or (iii) in compliance with record retention and reporting requirements. The costs associated with the proposal are insignificant and incidental to costs required by SB 15. The department evaluated each cost and decided that they were necessary to protect the public's interest in the privacy of personal information.

*Costs associated with providing reasonable assurances on permitted use.* Requestors from the public may incur costs associated with providing additional documentation to prove the requestor's permitted use under the proposed §217.125. The proposed amendments require the submission of additional documents for requests under some permitted uses. These proposed amendments and new subsection are necessary to implement SB 15's amendments to the permitted uses in Transportation Code §730.007(a)(2). The additional requirements are not arduous and can be met with information that should be in the requestor's possession, if they qualify for the permitted use. Requestors may also incur additional costs if they are required to provide additional information after the request to prove they qualified for a permitted use under the proposed §217.125(d). The requestor is required to provide the department with reasonable assurances that it qualifies to receive the records, under Transportation Code §730.007 and §730.012. Because requestors are required by Transportation Code Chapter 730 to provide reasonable assurances of their permitted use to the department, any costs of complying with the proposed §217.125 requirements to provide information regarding the requestor's per-

mitted use for the personal information are not the result of the proposed rules.

*Costs associated with entering into contracts.* The proposed amendments and new sections will likely increase costs to persons whose requests require entering into a contract. The costs of entering into a bulk contract are directly related to the implementation of SB 15's required terms for bulk contracts under Transportation Code §730.014(c) and any costs related to the requirements from the proposal are insignificant and incidental to costs required by SB 15.

First, the department anticipates there may be costs associated with the process of entering into a bulk contract. These costs may be incurred by members of the public who are currently under a contract with the department for an information product that the proposal defines as a bulk file, future requestors of one of the defined bulk files, and future requestors of bulk records that are not one of the defined bulk files. Authorized recipients who currently receive information products that the proposal defines as "bulk" under a service agreement will be required to enter into a new "bulk contract." Requestors required to switch from a service agreement to a bulk contract should not incur a significant cost because of the proposed contracting process for a bulk contract. For future requests for bulk files, those requestors will not incur a significant cost because of the proposal, since they would be required to go through a similar contracting process under the existing rules. For future requests for bulk records that are not one of the defined bulk files, the department evaluated requests for motor vehicle records over the course of this fiscal year and found no requests, other than requests for defined bulk files, that would have required a member of the public to enter into a bulk contract under the proposal. Therefore, the department anticipates that the proposal will not result in a significant increase in contract costs for the public.

Before the department can start the process of executing a contract, the requestor must first apply for a contract. The proposal clarifies the department's existing process of the requestor filing an application for a service agreement, which provides the department with proof of the requestor's identity and permitted use, as required by Transportation Code §730.007(a)(1), before it begins the contract execution process. The proposed new sections incorporate this process into the issuance of bulk contracts. The requirements for the application are not difficult to meet and the amendment to the definition for signature will allow the applications to be completed electronically, minimizing the cost to the requestor.

The proposal includes new sections which specify the amounts for the performance bond and insurance coverage required under SB 15's Transportation Code §730.014(c). New §217.123(f)(2)(A) establishes that, for bulk contracts with the department, performance bonds must be in the amount of \$1 million and specifically tied to compliance with Transportation Code Chapter 730 and this subchapter. The department considered requiring varying bond amounts based on the permitted use or requestor, but determined that because the requestors' obligations to protect the department's personal information does not significantly vary between bulk contracts that there was not a fair or logical basis for the variation. New §217.123(f)(2)(B) establishes that a requestor must provide proof of at least \$3 million in coverage that complies with Transportation Code §730.014(c)(3). This is the minimum amount of coverage required by §730.014(c)(3). The requirement provides requestors with flexibility to evaluate their business and determine their



coverage needs to pay within the statutory requirement. Any costs of complying with §217.123(f) are a result of enacting SB 15's Transportation Code §730.014(c).

*Costs associated with records and reports.* The proposed amendments and new sections will likely result in increased costs to regulated entities that are required to provide annual reports regarding those redisclosures to the department. These costs will only be incurred by authorized recipients under a bulk contract who redisclose information. The data required in the annual report is required by SB 15's Transportation Code §730.014(c)(7) and is required to be maintained in existing §217.127. Since maintaining the data is already required, current contract holders should not experience significant costs to comply with the proposal. Authorized recipients may need to modify systems or hire personnel to meet the requirements of the annual report, but those are business decisions of the authorized recipient and are beyond the scope of the department to determine. The annual report will be submitted electronically, which will eliminate any cost associated with printing and mailing the report. The proposal also requires the submission of a final report at the end of the contract. Any cost associated with providing this final annual report is outweighed by the public benefit of the department receiving the redisclosure information and by eliminating a potential legal loophole where a requestor could avoid filing the annual report by canceling their contract before the due date.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** Mr. Luna has also determined that there could be an adverse economic effect on small businesses, micro-businesses, and rural communities who currently receive or in the future will request personal information from department motor vehicle records in bulk. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to small businesses, micro-businesses, and rural communities. While rural communities will likely be exempt from a bulk contract's performance bond and insurance requirement under Transportation Code §730.014(d), they are not exempt from other costs associated with entering into a contract and producing annual reports. The department does not have sufficient information to estimate the number of small businesses, micro-businesses, or rural communities that may be affected by the proposal.

The primary objective of this proposal is to ensure the protection of an individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized in Transportation Code Chapter 730 and enacting SB 15's amendments to the chapter. The department considered the following options to minimize any adverse effect on small businesses, micro-businesses, and rural communities while accomplishing the proposal's objectives:

- (1) exempting small businesses, micro-businesses, and rural communities from bulk contract requirements;
- (2) modifying the performance bond and insurance coverage amounts for small and micro-businesses; and
- (3) creating a separate, non-bulk information product to access motor vehicle records that meets the needs of small businesses, micro-businesses, and rural communities and avoids the requirements of bulk contracts.

In considering Option 1, the department believes that, absent a statutorily created exemption, it would be against the statute and

legislative intent to exempt small businesses, micro-businesses, and rural communities from the bulk contract requirements. Transportation Code §730.014(d) created the only exemption regarding bulk contracts—it exempts a government agency, including a court or law enforcement agency, from the performance bond and insurance coverage requirements. Since the legislature created this one exemption, and no others, it would be against legislative intent for the department to exempt small businesses, micro-businesses, and rural communities from the bulk contract requirements.

In considering Option 2, the department decided that the rule cannot fairly and logically vary the bond amount, nor can it reduce the insurance amount. The department considered requiring varying bond amounts based on the permitted use or requestor but determined that because the requestors' obligations to protect the department's personal information does not significantly vary between bulk contracts that there was not a fair or logical basis for the variation. As for the insurance amount, the proposal requires the minimum amount of insurance coverage required by the statute, therefore the department is unable to reduce the cost associated with that coverage for small businesses, micro-businesses, and rural communities and still comply with Transportation Code §730.014(c)(3). To ensure that all bulk contracts provide the same levels of protection, the department opted not to modify the bond and insurance amounts for small businesses, micro-businesses, and rural communities.

In considering Option 3, the department decided that creating a separate, non-bulk information product to access motor vehicle that meets the needs of small businesses, micro-businesses, and rural communities and avoids the requirements of bulk contracts would not be in compliance with Transportation Code Chapter 730 or the Government Code Chapter 552. Any new product would meet Government Code Chapter 552's definition of "public information" and therefore would be required to be made available to any requestor. The department also determined the cost associated with attempting to meet the needs of all small businesses, micro-businesses, and rural communities would outweigh any benefit created by the new product.

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

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will create new regulation;
- will expand existing regulations;
- will not repeal existing regulations;

--will not increase or decrease the number of individuals subject to the rule's applicability; and

--will not positively or adversely affect the Texas economy.

#### REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on August 22, 2022. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The department proposes amendments to §§217.122, 217.123, 217.124, 217.125, 217.126, 217.127, 217.128, 217.129, and 217.130 and proposes new §§217.131, 217.132, and 217.133 under Transportation Code Chapter 730.

Transportation Code §730.014 authorizes the department to adopt rules to administer Transportation Code Chapter 730.

Transportation Code §730.0121 and §730.016 provides that the department shall establish rules to require a requestor to delete the department's personal information from its records if the requestor becomes aware that they are not an authorized recipient or they are convicted of an offense under Chapter 730.

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

**CROSS REFERENCE TO STATUTE.** Transportation Code §§730.001-730.016.

#### §217.122. *Definitions.*

(a) Words and terms defined in Transportation Code Chapter 730 have the same meaning when used in this subchapter, unless the context clearly indicates otherwise.

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

(1) [Authorized recipient--A person receiving motor vehicle records as defined by this subchapter, in a manner authorized by Transportation Code, Chapter 730.]

[(2)] Department--Texas Department of Motor Vehicles.

[(3)] Motor vehicle records--Information regarding the titling or registration of motor vehicles, which may include the make, vehicle identification number, year, model, body style, license number of a motor vehicle, and the name, address, and social security number of an owner or lienholder.]

[(4)] Personal information--Information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, personal identification certificate number, name, telephone number, medical or disability information, license plate number, or address other than the postal routing code.]

(2) [(5)] Requestor--A person, this state, or an agency of this state seeking personal information contained in motor vehicle records directly from the department.

(3) [(6)] Service agreement--A contractual agreement with the department that allows a requestor electronic [individuals, busi-

nesses or governmental entities or institutions to] access to department [the department's] motor vehicle records.

(4) [(7)] Written request--A request submitted [made] in writing, including by mail, electronic mail, electronic media, and facsimile transmission.

(5) Signature--Includes an electronic signature, as defined by Transportation Code §501.172, to the extent the department accepts such electronic signature.

(6) Batch Inquiry--Access, under a service agreement, to department motor vehicle records associated with Texas license plate numbers or vehicle identification numbers, where requests are submitted electronically to the department in a prescribed batch format. The department makes a disclosure for each record in a batch.

(7) MVInet Access--Electronic access, under a service agreement, to the department's motor vehicle registration and title database, with the ability to query records by a Texas license plate number, vehicle identification number, placard number, or current or previous document number. The department makes a disclosure each time a query of the system is made.

(8) Bulk--A disclosure by the department under Transportation Code §730.007 of at least 250 motor vehicle records containing personal information, including any of the files defined by subsection (b)(10) - (13) of this section.

(9) Bulk contract--A contractual agreement with the department for the disclosure of motor vehicle records in bulk to the requestor.

(10) Master File--A bulk file containing all the department's active and inactive registration and title records.

(11) Weekly Updates--A bulk file containing the department's new and renewed vehicle registration and title records from the previous week.

(12) Specialty Plates File--A bulk file containing Texas specialty license plate records.

(13) eTAG File--A bulk file containing records related to new or updated eTAGs, vehicle transfer notifications, and plate-to-owner records.

(14) Dealer/Supplemental File--A pair of files, one containing records of registration and title transactions processed by dealers with the department during the previous week and another containing the dealers' information, that are only available as a supplement to a bulk contract that includes the Weekly Updates.

#### §217.123. *Access to Motor Vehicle Records.*

(a) Except as required under subsection (f) of this section, a [Request for records. A] requestor seeking personal information from department motor vehicle records shall submit a written request in a [on the] form required by the department. [Information will be released only in accordance with Title 18 U.S.C. §2721 et seq.; Transportation Code, Chapter 730; Government Code, §552.130; and this subchapter.] A completed and properly executed form must include [, at a minimum]:

(1) the name and address of the requestor;

(2) a description of the requested motor vehicle records, including the Texas license plate number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(3) proof [a photograph] of the requestor's identity, in accordance with subsections (b) or (c) of this section [identification];

(4) a statement that the requestor: [requested information may only be released if the requestor]

(A) is the subject of the record;[;]

(B) [if the requestor] has the written consent of the person who is [authorization for release from] the subject of the record;[;] or

(C) will strictly limit the use of the personal information in department motor vehicle records to [if the intended use is for] a permitted use under Transportation Code Chapter 730, as indicated on the form;

(5) a certification that the statements made on the form are true and correct; and

(6) the signature of the requestor.

(b) Except as required by subsection (c) of this section, a [Identification required. A] requestor must provide the requestor's [may not apply for receipt of personal information unless the requestor presents] current photo identification containing a unique identification number. The identification [document] must be a:

(1) driver's license, Texas Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card;

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document;

(5) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code [;] Chapter 411, Subchapter H; or

(6) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement [copy of current law enforcement credentials if the requestor is a law enforcement officer].

(c) A requestor seeking personal information from department motor vehicle records for use by a law enforcement agency must:

(1) present the requestor's current law enforcement credentials;

(2) electronically submit the request in a manner that the department can verify that the requestor is acting on behalf of a law enforcement agency; or

(3) provide a written statement from a higher level in the chain of command on the law enforcement agency's letterhead stating that the requestor is not authorized to provide current law enforcement credentials and identifying the law enforcement agency's incident or case number for which the personal information is needed.

(d) A requestor seeking personal information from department motor vehicle records for use by a law enforcement agency may submit a verbal request to the department if the law enforcement agency has provided reasonable assurances that were accepted by the department as to the identity of the requestor within the last 12 months on a form required by the department. If a request is submitted verbally, the department may require the requestor to confirm the request in writing.

(e) [(e)]A requestor may receive electronic access to department motor vehicle records [Electronic access. The department may

make motor vehicle records available] under the terms and conditions of a [written] service agreement.

(1) Before a requestor can enter into a service agreement, the requestor must file a completed application on a form required by the department, for review and approval by the department. An application for a [Agreement with business or individuals. The written] service agreement must include [with a business or individual must contain]:

(A) a statement that the requestor will strictly limit the use of the personal information from department motor vehicle records to a permitted use under Transportation Code Chapter 730, as indicated on the application [the specified purpose of the agreement];

(B) the name and address of the requestor [an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records)];

(C) proof of the requestor's identity, in accordance with subsections (b) or (c) of this section [termination and default provisions];

(D) the [contractor's] signature of the requestor or, if the requestor is an organization or entity, the signature of an officer or director of the requestor; and

(E) a certification that the statements made in the application are true and correct. [a statement that the use of motor vehicle records obtained by virtue of a service agreement is conditional upon its being used:]

{(i) in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730; and}

{(ii) only for the purposes defined in the agreement; and}

{(F) the statements required by subsection (a) of this section.}

(2) Unless the requestor is exempt from the payment of fees, a service agreement must contain an adjustable account, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records). Notwithstanding §217.124 of this title, the department may modify initial deposit and minimum balance requirements depending on usage. [Agreements with Texas governmental entities.]

{(A) The written service agreement with a Texas governmental entity must contain:}

{(i) the specified purpose of the agreement;}

{(ii) a statement that the use of motor vehicle records obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;}

{(iii) the statements required by subsection (a) of this section;}

{(iv) the signature of an authorized official; and}

{(v) an attached statement citing the entity's authority to obtain social security number information, if applicable.}

{(B) Texas governmental entities, as defined in Government Code, §2252.001, and including the Texas Law Enforcement Telecommunication System and toll project entities, as defined by

Transportation Code, §372.001, are exempt from the payment of fees, except as provided by §217.124(e) of this title.]

[(d) Ineligibility to receive personal information. The department may prohibit a person, business, or Texas governmental entity from receiving personal information if the department finds a violation of a term or condition of the agreement entered into in accordance with subsection (e) of this section.]

[(e) Initial deposits and minimum balances. Notwithstanding §217.124 of this title, the department may modify initial deposit and minimum balance requirements on a case by case basis depending on customer usage.]

(f) Access to bulk motor vehicle records. A requestor seeking access to department motor vehicle records in bulk must enter into a bulk contract with the department.

(1) Before a requestor can enter into a bulk contract, the requestor must file a completed application on a form required by the department, for review and approval by the department. An application for a bulk contract must include:

(A) a statement that the requestor will strictly limit the use of the personal information to a permitted use under Transportation Code Chapter 730, as indicated on the application;

(B) the name and address of the requestor;

(C) proof of the requestor's identity, in accordance with §217.123(b) or (c) of this title (relating to Access to Motor Vehicle Records);

(D) a certification that the statements made on the form are true and correct; and

(E) the signature of the requestor or, if the requestor is an organization or entity, the signature of an officer or director of the requestor.

(2) Prior to the execution of a bulk contract, a requestor must provide proof the requestor has:

(A) posted a \$1 million performance bond, payable to this state, conditioned upon the performance of all the requirements of Transportation Code Chapter 730 and this subchapter; and

(B) insurance coverage in the amount of at least \$3 million and that meets the requirements of Transportation Code §730.014(c)(3).

(g) If a person is convicted of an offense under Transportation Code Chapter 730 or is found by a court to have violated a rule under this subchapter, then any contract with that person to access department motor vehicle records is terminated as of the date of the court's final determination.

(h) The requirements of this section do not apply to discovery, subpoena, or other means of legal compulsion for the disclosure of personal information.

(i) An authorized recipient will receive requested motor vehicle records in accordance with Title 18 U.S.C. §2721 et seq.; Transportation Code Chapter 730; Government Code §552.130; and this subchapter.

*§217.124. Cost of Motor Vehicle Records.*

(a) Standard costs. The department will charge fees in accordance with Government Code[;] Chapter 552 and the cost rules promulgated by the Office of the Attorney General in 1 Texas Administrative Code[;] Chapter 70 (relating to Cost of Copies of Public Information).

(b) Law enforcement. An employee of a state, federal, or local law enforcement agency [entity] is exempt from the payment of fees for motor vehicle records in subsection (c)(1) - (4) of this section if the records are necessary to carry out lawful functions of the law enforcement agency.

(c) Motor vehicle record costs [; For new contracts and renewals, the costs are]:

(1) Title history - \$5.75;

(2) Certified title history - \$6.75;

(3) Title and registration verification (record search) - \$2.30; and

(4) Certified title and registration verification (record search) - \$3.30. [; and]

[(5) Duplicate registration receipt for current registration period - \$2.]

(d) Electronic motor vehicle records and files: [;]

(1) Master File [file of motor vehicle registration and title database] - \$5,000 plus \$.38 per 1,000 records;

(2) Weekly Updates [updates to motor vehicle registration and title database] - deposit of \$1,755 and \$135 per week;

(3) eTAG File [e-Tag file] - deposit of \$845 and \$65 per week;

(4) Dealer/Supplemental File [Dealer supplemental file] - deposit of \$1,235 and \$95 per week;

(5) Specialty Plates File [plates file] - deposit of \$1,235 and \$95 per week;

(6) Batch Inquiry [inquiry to motor vehicle registration and title database] - deposit of \$1,000, minimum balance of \$750 and \$23 per run plus \$.12 per record;

(7) MVInet Access [Online motor vehicle inquiry (MVInet) access] - deposit of \$200, minimum balance of \$150 and \$23 per month plus \$.12 per record; and

(8) Scofflaw remarks (inquiry, addition, or deletion) - deposit of \$500, minimum balance of \$350 and \$23 per run plus \$.12 per record.

(e) Texas governmental entities, as defined in Government Code §2252.001, the Texas Law Enforcement Telecommunication System, and toll project entities, as defined by Transportation Code §372.001, are exempt from the payment of fees, except for the fees listed in [Exemption applicability. The exemption granted in §217.123(e)(2)(B) of this title (relating to Access to Motor Vehicle Records) does not apply to] subsection (d)(1), (6), or (8) of this section.

(f) Reciprocity agreements. The department may enter into reciprocity agreements for records access with other governmental entities that may waive some or all of the fees established in this section.

*§217.125. Additional Documentation Related to [Certain] Permitted Uses.*

(a) The department may require a requestor to provide reasonable assurance as to the identity of the requestor and that the use of motor vehicle records is only as authorized under Transportation Code [;] §730.012(a). Where applicable, each requestor submitting a request for motor vehicle records shall provide documentation satisfactory to the department that they are authorized to request the information on behalf of the organization, entity, [business] or government agency [entity] authorized to receive the information.

(b) Requestors seeking personal information from motor vehicle records from the department for a permitted use listed in this subsection must submit additional documentation. [Disclosure under the following permitted uses requires additional documentation submitted to the department:]

(1) A request under Transportation Code [§] §730.007(a)(2)(C) must include [requires submitting] the personal information the business is attempting to verify against the department's motor vehicle records and documentation sufficient to prove the requestor is a business actively licensed by, registered with, or subject to regulatory oversight by a government agency.

(2) A request under Transportation Code [§] §730.007(a)(2)(D) must include [requires submitting] proof of a legal proceeding, or if no proceeding has been initiated, proof the requestor is in anticipation of litigation [proceeding].

(3) A request under Transportation Code [§] §730.007(a)(2)(E) must include [requires submitting] documentation sufficient to prove the requestor is employed in a researching occupation.

(4) A request under Transportation Code [§] §730.007(a)(2)(F) must include an active [requires submitting a] license number provided by the Texas Department of Insurance or an active out-of-state license number provided by the relevant regulatory authority, an active [a] license number the insurance support organization is working under, or proof of self-insurance.

(5) A request under Transportation Code [§] §730.007(a)(2)(G) must include an active [requires submitting a] license number provided by the Texas Department of Licensing and Regulation or an active out-of-state license number provided by the relevant regulatory authority.

(6) A request under Transportation Code [§] §730.007(a)(2)(H) must include an active [requires submitting a] license number provided by the Texas Department of Public Safety or an active out-of-state license number provided by the relevant regulatory authority.

(7) A request under Transportation Code [§] §730.007(a)(2)(I) must include [requires submitting] a copy of an active [the] commercial driver's license.

(8) A request under Transportation Code [§] §730.007(a)(2)(J) must include [requires submitting] documentation to relate the requested personal information with the operation of a [private] toll transportation facility or another type of transportation project as described by Transportation Code §370.003.

(9) A request under Transportation Code [§] §730.007(a)(2)(K) must include [requires a consumer reporting agency, as defined by the Fair Credit Reporting Act (15 U.S.C. §1681 et. seq.); to submit] documentation on official letterhead indicating a permitted use for personal information, as defined by the Fair Credit Reporting Act (15 U.S.C. §1681 et. Seq.) [that Act].

(10) A request under Transportation Code [§] §730.007(a)(2)(L) must include an active license number of a manufacturer, dealership, or distributor issued by the department or an active out-of-state license number provided by the relevant regulatory authority.

(11) A request under Transportation Code [§] §730.007(a)(2)(M) must include an active license or registration number of a salvage vehicle dealer, an independent motor vehicle dealer, or a wholesale motor vehicle dealer issued by the department; or an active license issued by the Texas Department of Licensing and

Regulation to a used automotive parts recycler; or other proof that the requestor is subject to regulatory oversight by an entity listed in Transportation Code §730.007(a)(2)(M)(iv).

(c) The department may require a requestor to provide additional information to clarify the requestor's use of the personal information under Transportation Code Chapter 730, if the reasonable assurances provided with the request are not satisfactory to the department. [Regarding §217.125(b)(4-6); the department may accept active out-of-state licenses as documentation of a permitted use. Under this subsection, the department will limit access to a record-by-record basis.]

*§217.126. Limitations on [Resale and] Redisclosure.*

(a) Authorized recipients may only [resell or] redisclose personal information from department motor vehicle records to other authorized recipients and not in the identical or substantially identical format as disclosed [provided] by the department.

(b) The department may request information regarding how a person to whom the authorized recipient may redisclose personal information represents to the authorized recipient that the person has a permitted use under Transportation Code §730.007. [Authorized recipients may not resell or redisclose the entire motor vehicle records database in its complete bulk format.]

(c) Any authorized recipient [reselling or] redisclosing personal information from department motor vehicle records must inform the person to whom they are [reselling or] redisclosing of their obligations under Transportation Code [§] Chapter 730 and this subchapter.

(d) An authorized recipient who resold personal information from department motor vehicle records prior to June 18, 2021, is subject to the limitations in this section for that resale. [Any authorized recipient is responsible for misuse of personal information by any person to whom they redisclosed the information receiving their version of the information, regardless of whether the authorized recipient approved or was aware of subsequent transfers of the information.]

*§217.127. Records Maintained by Recipients Who [Resell or] Rediscover Personal Information.*

(a) Authorized recipients who [resell or] redisclose personal information from department motor vehicle records are required to maintain records of that transaction.

(b) Records must be maintained for not less than five years and must include:

(1) the name and contact information of any person to whom the authorized recipient [recipient of resold or] redisclosed personal information from the department [contained in] motor vehicle records, including both the individual's name and the organization or entity with which the individual is associated, when known;

(2) the person's permitted use under Transportation Code §730.007 for [which] the personal information from the department motor vehicle records [were released], and any [or] documentation the authorized recipient received related to the person's permitted use [in accordance with §217.125(b)];

(3) the quantity of motor vehicle records redisclosed [sold or disclosed] to the [each subsequent] person under each permitted use;

(4) a statement [by the authorized recipient] specifying what data was [resold or] redisclosed and in what format; and

(5) [any other] documentation of any [the] agreement between the authorized recipient and the person to whom the authorized recipient redisclosed [to resell or redisclose] personal information from department [contained in] motor vehicle records.

(c) An authorized recipient who resold personal information from department motor vehicle records prior to June 18, 2021, must maintain records of those transactions for five years.

*§217.128. Department Review of Recipient's Records of [Resale or] RedisDisclosure.*

(a) The department may [has the authority to] request and review records maintained under §217.127 of this title (relating to Records Maintained by Recipients Who Redisclose Personal Information) [kept by all authorized recipients who resell or redisclose personal information].

(b) The department will [This] request records from authorized recipients [will be made] in writing.

(c) Failure to fully respond to the department's request may result in a cessation of information under Transportation Code §730.014(g). If the authorized recipient has not provided the requested records to the department within 30 days after the department's request, the department may terminate the contract with the authorized recipient. [The requested records must be provided to the department within 30 days of the request.]

[(d) Failure to fully respond to the department's request may result in termination of access to motor vehicle records under Transportation Code, §730.007.]

[(e) Upon receipt of the requested records, the department will evaluate the records for compliance with the service agreement, applicable statutes, and rules.]

[(f) If it is determined that an authorized recipient is not in compliance with the service agreement, applicable statutes, and rules, the service agreement may be terminated.]

*§217.129. Ineligibility to Receive Personal Information Contained in Motor Vehicle Records.*

(a) The department may deny a request for or cease disclosing personal information contained in the department's [requestor's access to] motor vehicle records if it determines withholding the information benefits the public's interest more than releasing the information.

(b) If the department determines an authorized recipient [of motor vehicle records] has violated a [clause or] term or condition of a contract with the department to access motor vehicle records [the service agreement,] and the department terminates the contract [that service agreement has been terminated], that authorized recipient cannot enter into a subsequent contract with the department to access motor vehicle records [service agreement] unless approved to do so under §217.130 of this title (relating to Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated).

(c) Termination of a contract with the department to access motor vehicle records [the service agreement] caused by any member of an organization [a business, partnership,] or entity shall be effective on the whole organization or entity. Subsequent organizations or entities [businesses] formed by any member, officer, partner, or affiliate of an organization or entity whose contract with the department to access motor vehicle records [service agreement] has been terminated cannot enter into a subsequent contract with the department to access motor vehicle records, unless approved to do so under §217.130 of this title (relating to Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated) [will also be ineligible to receive].

*§217.130. Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated.*

(a) A requestor seeking a contract with the department to access motor vehicle records who has had a previous contract to access

motor vehicle records [whose service agreement was previously] terminated by the department for reasons other than the failure to maintain minimum balance requirements in an adjustable account, but who is not subject to Transportation Code [.] §730.016, shall submit a written request for reapproval on the form required by the department.

(b) In addition to the requirements of §217.123 of this title (relating to Access to Motor Vehicle Records), the request for reapproval must contain:

(1) any documents indicating remedial efforts the requestor has undertaken to prevent the unlawful disclosure of personal information from department motor vehicle records; [.]

(2) any documents indicating agreements between the requestor and any person to whom the requestor has reason to believe it will redisclose personal information from the department [third parties receiving resold or redisclosed] motor vehicle records; [.] and

(3) a statement that the requestor will notify the department before [reselling or] redisclosing any personal information from the department motor vehicle records for a [the] time period prescribed by the department, including all of the information required under §217.127(b) of this title (relating to Records Maintained by Recipients Who [Resell or] Redisclose Personal Information). [The notification must include the name, address, and contact information of the third party requesting resold or redisclosed motor vehicle records, and must include the form(s) used to verify the third party's lawful purpose in obtaining motor vehicle records.]

(c) Failure to comply with [any of the terms of] this section or a re-offense of a contract with the department to access motor vehicle records [the service agreement] will result in the termination of the contract [service agreement] and the permanent ineligibility [inability] to receive motor vehicle records from the department under Transportation Code §730.007.

*§217.131. Notices Regarding Unauthorized Recipient.*

(a) For the purposes of this section, a requestor includes a person, the state, or an agency of this state that previously received personal information from department motor vehicle records.

(b) A requestor who is not an authorized recipient must, not later than 90 days after the date the requestor becomes aware that the requestor is not an authorized recipient, delete from the requestor's records any personal information received from the department that the requestor is not permitted to receive and use under Transportation Code Chapter 730.

(c) A requestor who becomes aware that the requestor is not an authorized recipient must promptly notify the department that the requestor is not an authorized recipient and provide the date they became aware.

(d) If the department becomes aware that the requestor is not an authorized recipient before receiving notice from the requestor, the department will send a written notice to the requestor stating that the requestor is not an authorized recipient. If the requestor was not already aware that it is not an authorized recipient, within 90 days from the date the department sends its notice under this subsection, requestor must delete any personal information received from the department that the requestor is not permitted to receive and use under Transportation Code Chapter 730.

(e) A requestor who becomes aware that the requestor is not an authorized recipient must notify the department when all the department's personal information has been deleted.

*§217.132. Notices Regarding Ineligibility.*

(a) A person who becomes ineligible to receive personal information under Transportation Code §730.016 must notify the department of the basis of the person's ineligibility within 15 days of the court's conviction or final determination.

(b) A person who becomes ineligible to receive personal information under Transportation Code §730.016 must notify the department when all of the personal information received from the department under Transportation Code Chapter 730 has been deleted from the person's records.

§217.133. Annual Report.

(a) An authorized recipient under a bulk contract must electronically submit an annual report, on a form prescribed by the department, on or before October 1st of each year for the 12-month period beginning September 1st of the preceding year.

(b) An annual report must include information regarding any third party to which the authorized recipient redisclosed personal information from department motor vehicle records during the reporting period, including:

(1) the name of the third party, including both the individual and the organization or entity with which the individual is associated, when known; and

(2) the third party's permitted uses under Transportation Code §730.007 for the redisclosed motor vehicle records.

(c) An annual report must include the signature of the requestor or, if the requestor is an organization or entity, the signature of an officer or director of the requestor certifying that all statements in the annual report are true and correct.

(d) An authorized recipient under a bulk contract may request an extension of time to submit an annual report by sending a written request to the department no later than September 1st of the year the annual report is required to be submitted. The request for extension must

include proof of an event that is beyond the control of the authorized recipient and prevents the timely submission of the annual report. The department may grant an extension for submission of the annual report to no later than December 1st of the year the annual report is required to be submitted.

(e) If an authorized recipient under a bulk contract fails to timely submit the annual report or request an extension under subsection (d) of this section, the department may cease disclosing motor vehicle records until the annual report is submitted to the department. If an authorized recipient fails to submit an annual report by December 1st of the year the annual report is required to be submitted, then the department may terminate the bulk contract.

(f) If a person cancels or the department terminates a bulk contract, the person must submit a final report containing all the information required under subsection (b) of this section relating to all personal information from department motor vehicle records redisclosed since the last annual report or, if the person has never submitted an annual report, since the execution of the bulk contract. The person must submit this report by the 90th day after the date of the cancellation or termination of the bulk contract.

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 July 11, 2022.

TRD-202202593

Elizabeth Brown Fore

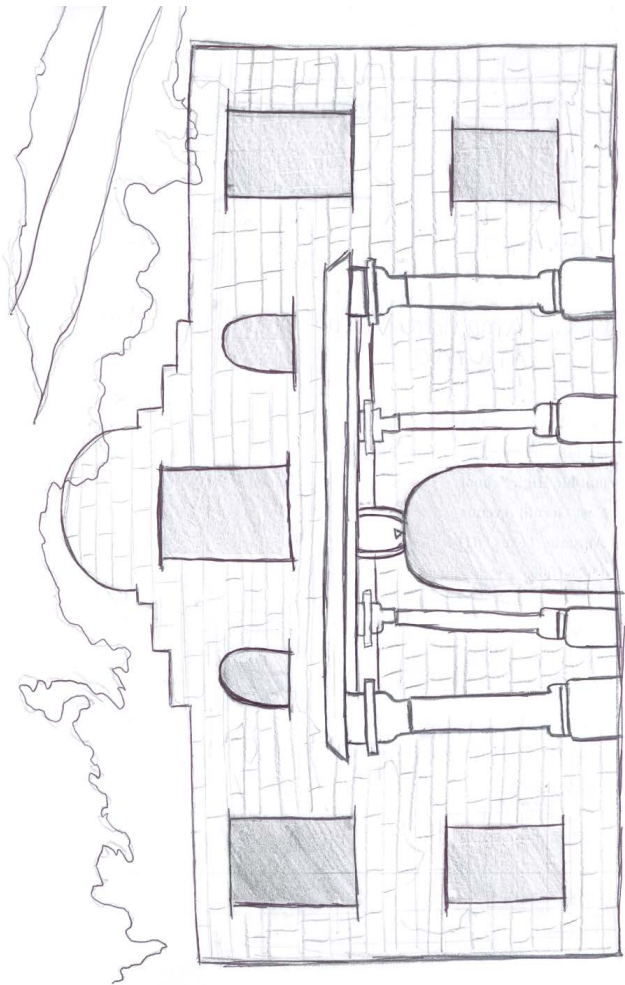
General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: August 21, 2022

For further information, please call: (512) 465-5665







# 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 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

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

###### 19 TAC §61.1025

The Texas Education Agency (TEA) adopts an amendment to §61.1025, concerning Public Education Information Management System (PEIMS) data and reporting standards. The amendment is adopted without changes to the proposed text as published in the April 29, 2022 issue of the *Texas Register* (47 TexReg 2410) and will not be republished. The adopted amendment reflects modifications to Texas Education Code (TEC), §48.009, made by Senate Bill (SB) 2050, 87th Texas Legislature, Regular Session, 2021, relating to the reporting of bullying incidents, including cyberbullying.

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

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

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

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began April 29, 2022, and ended May 31, 2022. Following is a summary of the public comment received and the agency response.

**Comment:** A school district administrator commented that schools currently have 17 PEIMS submissions in a given school year, which is burdensome and unnecessary since much of the data requested is being repeated. The commenter stated that adding more reporting requirements taxes school front offices and administrators, giving them less time to support and work with students.

**Response:** The agency provides the following clarification. TEC, §48.009(b-4), as added by SB 2050, 87th Texas Legislature, Regular Session, 2021, requires that each school district and

open-enrollment charter school annually report through PEIMS the number of reported incidents of bullying, including cyberbullying, that have occurred at each campus.

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

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

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 July 6, 2022.

TRD-202202554

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 26, 2022

Proposal publication date: April 29, 2022

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



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBECE) adopts amendments to 19 Texas Administrative Code (TAC) §§231.3, 231.9, 231.11, 231.13, 231.15, 231.17, 231.19, 231.21, 231.23, 231.25, 231.27, 231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73, 231.79, 231.131, 231.135, 231.153, 231.173, 231.271, 231.281, 231.289, 231.291, 231.301, 231.303, 231.305, 231.307, 231.309, 231.311, 231.313, 231.333, 231.335, 231.337, 231.339, 231.341, 231.381, 231.401, 231.403, 231.405, 231.421, 231.423, 231.425, 231.427, 231.441, 231.443, 231.469, 231.481, 231.483, 231.485, 231.487, 231.489, 231.501, 231.503, 231.521, 231.523, 231.525, 231.543, 231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579,

231.581, 231.583, 231.587, 231.589, 231.591, 231.593, 231.631, 231.633, and 231.651 and new §§231.31, 231.293, and 231.429, concerning requirements for public school personnel assignments. The amendments are adopted without changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1371) and will not be republished. The adopted revisions incorporate courses approved by the State Board of Education (SBOE), add certificate areas to the list of credentials appropriate for placement into an assignment, and incorporate technical edits where needed to improve readability and align citations.

**REASONED JUSTIFICATION:** The SBEC rules in 19 TAC Chapter 231 establish the personnel assignments that correlate with appropriate certifications and are organized as follows: Subchapter A, Criteria for Assignment of Public School Personnel; Subchapter B, Prekindergarten-Grade 6 Assignments; Subchapter C, Grades 6-8 Assignments; Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments; Subchapter E, Grades 9-12 Assignments, Subchapter F, Special Education-Related Services Personnel Assignments, and Subchapter G, Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments. These subchapters offer guidance to school districts and educators by providing the list of courses by grade level and subject area and identifying the corresponding certificates and other requirements for placement of individuals into classroom and/or campus assignments.

Proposed revisions to 19 TAC Chapter 231, Subchapters B, C, and E, are described below.

#### *Subchapter B. Prekindergarten-Grade 6 Assignments*

##### *Science of Teaching Reading Personnel Assignments*

To align with statutory requirements in House Bill (HB) 3, 86th Texas Legislature, Regular Session, 2019, the adopted revisions add certificates that reflect the requirement that educators demonstrate proficiency in the science of teaching reading to teach certain courses. Changes to §§231.3, 231.9, 231.21, 231.23, and 231.27 add "Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6" and "Early Childhood: Prekindergarten-Grade 3" certificates. Changes to §231.15 and §231.17 add "Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6," "Early Childhood: Prekindergarten-Grade 3 (Prekindergarten-Grade 3 only)," and "Core Subjects with Science of Teaching Reading: Grades 4-8 (Grades 4-6 only) certificates. Changes to §231.25 and new §231.31 add the "Early Childhood: Prekindergarten-Grade 3 (Prekindergarten-Grade 3 only)" certificate.

##### *Titles, Assignments, and Technical Changes*

The adopted amendment to §231.11 updates the title to "Bilingual, Prekindergarten-Grade 6" to reflect the appropriate course title with the assignment and provides technical edits to align the appropriate certificates with the course.

The adopted amendment to §231.13 updates the title to "English as a Second Language, Prekindergarten-Grade 6" to reflect the appropriate course title with the assignment.

The adopted amendment to §231.15 updates the title to "Elementary, Prekindergarten-Grade 6" to reflect the appropriate course title with the assignment and provides technical edits to align the appropriate certificates with the course.

The adopted amendment to §231.17 updates the title to "Reading, Prekindergarten-Grade 6" to reflect the appropriate course title with the assignment and provides technical edits to align the appropriate certificates with the course.

The adopted amendment to §231.19 updates the title to "Languages Other Than English, Prekindergarten-Grade 6," adds American Sign Language to the list of courses and provides technical edits to align the appropriate certificates with the course.

Adopted new §231.31, "Health, Prekindergarten-Grade 6," adds to the course offerings with existing certificates appropriate for the assignment and updates content previously inadvertently left out of the rules.

#### *Subchapter C. Grades 6-8 Assignments*

##### *Science of Teaching Reading Personnel Assignments:*

To align with statutory requirements in HB 3, 86th Texas Legislature, Regular Session, 2019, the adopted revisions add certificates that reflect the requirement that educators demonstrate proficiency in the science of teaching reading to teach certain courses. Changes to §§231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.61, and 231.63 add "Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6" and "Core Subjects with Science of Teaching Reading: Grades 4-8" certificates. Changes to §§231.67, 231.69, 231.71, and 231.73 add the "Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6" certificate. Changes to §231.59 and §231.65 add the "Core Subjects with Science of Teaching Reading: Grades 4-8" certificate. Changes to §§231.45, 231.49, and 231.51 add the "English Language Arts and Reading with Science of Teaching Reading: Grades 4-8," and "English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8" certificates. Changes to §231.57 and new §231.59 add the "English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8" certificate.

##### *Titles, Assignments, and Technical Changes*

The adopted amendment to §231.67, Health, Grades 6-8, deletes outdated certificate references in paragraphs (11) and (23) and provides further clarity around appropriate qualifications for the assignment. The remaining rules are renumbered accordingly.

The adopted amendment to §231.69, Physical Education, Grades 6-8, deletes outdated certificate references in paragraphs (8) and (16) and provides further clarity around appropriate qualifications for the assignment. The remaining rules are renumbered accordingly.

The adopted amendment to §231.79, Career Development, Grades 6-8, adds Technology Applications: Early Childhood-Grade 12 and Technology Applications: Grades 8-12 to the list of certificates appropriate to teach this course.

#### *Subchapter E. Grades 9-12 Assignments*

##### *Titles, Assignments, and Technical Changes*

*Division 1. English Language Arts and Reading, Grades 9-12 Assignments.*

The adopted amendments to §231.131, Writing, Grades 9-12, and §231.135, Journalism, Grades 9-12, incorporate minor technical edits for both courses to remove nonexistent courses, correct course name titles, and delete outdated certificate and semester credit hour references. The remaining information in these sections are renumbered accordingly, as applicable.

*Division 2. Languages Other Than English, Grades 9-12 Assignments.*

The adopted amendment to §231.153, American Sign Language, Grades 9-12, subsection (a), adds "or American Sign Language, Advanced Independent Study" to reflect a complete listing of courses for assignments to teach this subject at this grade level. All other information remains unchanged as presented in rule.

*Division 3. Social Studies, Grades 9-12 Assignments.*

The adopted amendment to §231.173, Economics with Emphasis on the Free Enterprise System and Its Benefits, Grades 9-12, adds "or Economics Advanced Studies" to reflect a complete listing of courses for assignments to teach this subject at this grade level. All other information remains unchanged as presented in rule.

*Division 9. Career Development, Grades 9-12 Assignments.*

The adopted amendment to §231.271, Career Development, Grades 9-12, subsections (a) and (c), adds Technology Applications: Early Childhood-Grade 12 and Technology Applications: Grades 8-12 to the list of certificates appropriate for the specified assignments.

*Division 10. Agriculture, Food, and Natural Resources, Grades 9-12 Assignments.*

The adopted amendment to §231.281, Agriculture, Food, and Natural Resources, Grades 9-12, removes Energy and Natural Resource Technology from the list of courses to create adopted new §231.293, Energy and Natural Resource Technology, Grades 9-12, and lists the certificates appropriate for placement into the assignment. The adopted change clarifies that individuals already teaching courses in the Renewable Energy Program of Study will also be eligible to teach this course.

*Division 12. Arts, Audio Video Technology, and Communications, Grades 9-12 Assignments.*

The adopted amendments incorporate a minor technical edit to the division title to read, "Arts, Audio/Video Technology, and Communications, Grades 9-12 Assignments." The technical edit aligns the division title reference with all other course listings in rule.

*Division 19. Human Services, Grades 9-12 Assignments.*

The adopted amendment to §231.469, Cosmetology, Grades 9-12, removes the reference to "a valid license as a cosmetology instructor issued by the Texas Department of Licensing and Regulation (TDLR)," eliminated during the 2021 legislative session, and replaces the reference to a required credential with "a valid Cosmetology Operator license or Class A Barber Operator license."

Adopted amendments as specified by divisions and sections add Trade and Industrial Workforce Training: Grades 6-12 to the list of certificates appropriate for placement into the following assignments: Division 10: §231.289 and §231.291; Division 11: §§231.301, 231.303, 231.305, 231.307, 231.309, 231.311, and 231.313; Division 12: §§231.333, 231.335, 231.337, 231.339, and 231.341; Division 16: §§231.401, 231.403, and 231.405; Division 18: §231.441 and §231.443; Division 20: §§231.481, 231.483, 231.485, 231.487, and 231.489; Division 21: §231.501 and §231.503; Division 22: §§231.521, 231.523, and 231.525; Division 23: §231.543; and Division 25: §231.631 and §231.633.

*Aligning with SBOE and Necessary Updates*

To reflect courses approved by the SBOE and to make other necessary updates, the changes adopted in the specified divisions below identify the appropriate certificates and/or training requirements for placement into various assignments.

*Division 14. Education and Training, Grades 9-12 Assignments.*

The adopted amendment to §231.381, Education and Training, Grades 9-12, adds two new SBOE-approved courses: Practicum in Early Learning, Grades 9-12, and Extended Practicum in Early Learning, Grades 9-12. The adopted changes to subsections (b) and (c) confirm that certificates and training requirements already established in rule are appropriate for assignment to teach the two new courses.

*Division 17. Health Science, Grades 9-12 Assignments.*

The adopted amendment to §231.421(a) adds the new SBOE-approved course, Pharmacy II, to the list of course offerings. The certificates already established in rule are applicable for placement into this new course assignment.

The adopted amendment to §231.421(b) adds the new SBOE-approved course, Medical Assistant, to the list of course offerings. The certificates already established in rule are applicable for placement into this new course assignment.

The adopted amendment to §231.423, Anatomy and Physiology, Medical Microbiology, and Pathophysiology, Grades 9-12, adds the new SBOE-approved course, Respiratory Therapy I, to the list of course offerings. The certificates already established in rule are applicable for placement into this new course assignment.

The adopted amendment to §231.425, Mathematics for Medical Professionals, Grades 9-12, adds the new SBOE-approved course, Medical Coding and Billing, to the list of course offerings. The certificates already established in rule are applicable for placement into this new course assignment.

The adopted amendment to §231.427, Health Informatics, Grades 9-12, deletes business, office education, and marketing certificates specified in paragraphs (5) through (9). These adopted changes align with SBOE changes to content prerequisites to teach this course.

Adopted new §231.429, Healthcare Administration and Management; Leadership and Management in Nursing, Grades 9-12, adds two new SBOE-approved courses and the certificates appropriate for placement into these course assignments.

*Division 24. Science, Technology, Engineering, and Mathematics, Grades 9-12 Assignments.*

The adopted amendments to this division delete references to Science, Technology, Engineering, and Mathematics: Grades 6-12 certificate from 12 sections: §§231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579, 231.581, and 231.583. A Science, Technology, Engineering, and Mathematics (STEM) certificate does not exist, nor are there any plans to create an SBEC-issued certificate for this subject area. The adopted deletion of references to this non-existent certificate reduces confusion in the field regarding STEM certification. The remaining information in these sections are renumbered accordingly, as applicable.

The adopted amendments also add Trade and Industrial Education: Grades 6-12, Trade and Industrial Education: Grades 8-12, and Trade and Industrial Workforce Training: Grades 6-12 certificates, as applicable, to the list of credentials appro-

ropriate for placement into assignments specified in 16 sections: §§231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579, 231.581, 231.583, 231.587, 231.589, 231.591, and 231.593. The remaining information in these sections are renumbered accordingly, as applicable.

#### *Division 26. Energy, Grades 9-12 Assignments.*

The adopted amendment to §231.651, Energy and Natural Resources, Grades 9-12, changes the heading to "Energy" for this series of course listings and adds the Trade and Industrial Workforce Training: Grades 6-12 certificate to the list of credentials appropriate to teach the specified courses. The remaining information in these sections are renumbered accordingly, and as applicable.

**SUMMARY OF COMMENTS AND RESPONSES.** The public comment period on the proposal began March 18, 2022, and ended April 18, 2022. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the April 29, 2022, meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

**Comment:** Three individuals commented in favor of the addition of Technology Applications to the list of certificates appropriate to teach Investigating Careers/Career Development courses.

**Response:** The SBEC agrees. The revisions reflect the ongoing collaboration of TEA staff who support the SBEC and the SBOE in the identification of certificates appropriate for placement of educators into various personnel assignments and the effective implementation of TEKS that ensure strong curriculum and student success in the Kindergarten-Grade 12 setting.

**Comment:** One educator commented against the addition of Technology Applications to the list of certificates appropriate to teach Career Preparation because Technology Applications certification does not require the skills necessary to place students in appropriate jobs for their individual talents and interests.

**Response:** The SBEC disagrees. The revisions reflect the ongoing collaboration of TEA staff who support the SBEC and the SBOE to increase flexibility in educator assignments by identifying certificates that are appropriate for various personnel assignments without compromising the effective implementation of TEKS that ensure strong curriculum and student success in the Kindergarten-Grade 12 setting. Several career and technical education-related certifications have already been identified as appropriate to teach these courses. Educators certified in Technology Applications are aware of the current job market and opportunities for students leaving school and seeking to enter the technology sector. Additionally, the rules do not create a requirement for school districts to hire individuals with the Technology Applications certificates; they simply allow hiring flexibility.

**Comment:** One individual commented neither in support nor against the proposed rule change. The commenter stated that teachers should be allowed to create lesson plans that can be utilized to engage the learner in the development of essential skills and to advance in public information. The administrator also shared that living experiences allow teachers to apply information and experiences to master skills.

**Response:** The comment is outside the scope of the rule. The comment does not address any of the revisions, but instead of-

fers a general opinion about the importance of lesson plans to teacher success.

The State Board of Education (SBOE) took no action on the review of amendments to §§231.3, 231.9, 231.11, 231.13, 231.15, 231.17, 231.19, 231.21, 231.23, 231.25, 231.27, 231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73, 231.79, 231.131, 231.135, 231.153, 231.173, 231.271, 231.281, 231.289, 231.291, 231.301, 231.303, 231.305, 231.307, 231.309, 231.311, 231.313, 231.333, 231.335, 231.337, 231.339, 231.341, 231.381, 231.401, 231.403, 231.405, 231.421, 231.423, 231.425, 231.427, 231.441, 231.443, 231.469, 231.481, 231.483, 231.485, 231.487, 231.489, 231.501, 231.503, 231.521, 231.523, 231.525, 231.543, 231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579, 231.581, 231.583, 231.587, 231.589, 231.591, 231.593, 231.631, 231.633, and 231.651 and new §§231.31, 231.293, and 231.429 at the June 17, 2022, SBOE meeting.

### **SUBCHAPTER B. PREKINDERGARTEN- GRADE 6 ASSIGNMENTS**

#### **19 TAC §§231.3, 231.9, 231.11, 231.13, 231.15, 231.17, 231.19, 231.21, 231.23, 231.25, 231.27, 231.31**

**STATUTORY AUTHORITY.** The amendments and new section are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The adopted amendments and new section implement Texas Education Code §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. GRADES 6-8  
ASSIGNMENTS

**19 TAC §§231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73, 231.79**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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SUBCHAPTER E. GRADES 9 - 12  
ASSIGNMENTS  
DIVISION 1. ENGLISH LANGUAGE ARTS  
AND READING, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.131, §231.135**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter

B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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DIVISION 2. LANGUAGES OTHER THAN  
ENGLISH, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.153**

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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### DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

#### 19 TAC §231.173

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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### DIVISION 9. CAREER DEVELOPMENT, GRADES 9-12 ASSIGNMENTS

#### 19 TAC §231.271

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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### DIVISION 10. AGRICULTURE, FOOD, AND NATURAL RESOURCES, GRADES 9-12 ASSIGNMENTS

#### 19 TAC §§231.281, 231.289, 231.291, 231.293

STATUTORY AUTHORITY. The amendments and new section are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, includ-

ing emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments and new section implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.301, 231.303, 231.305, 231.307, 231.309, 231.311, 231.313

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 12. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.333, 231.335, 231.337, 231.339, 231.341

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 14. EDUCATION AND TRAINING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.381

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator,

educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 16. GOVERNMENT AND PUBLIC ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.401, 231.403, 231.405

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 17. HEALTH SCIENCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.421, 231.423, 231.425, 231.427, 231.429

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 18. HOSPITALITY AND TOURISM, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.441, §231.443

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 19. HUMAN SERVICES, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.469

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B;

TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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



## DIVISION 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.481, 231.483, 231.485, 231.487, 231.489

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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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Cristina De La Fuente-Valadez  
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## DIVISION 21. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.501, §231.503

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 22. MANUFACTURING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.521, 231.523, 231.525

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern

or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 23. MARKETING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.543

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

**19 TAC §§231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579, 231.581, 231.583, 231.587, 231.589, 231.591, 231.593**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 25. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.631, §231.633**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## DIVISION 26. ENERGY, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.651**

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator,

educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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## CHAPTER 250. ADMINISTRATION SUBCHAPTER B. RULEMAKING PROCEDURES

### 19 TAC §250.20

The State Board for Educator Certification (SBEC) adopts an amendment to 19 Texas Administrative Code (TAC) §250.20, concerning petition for adoption of rules or rule changes. The amendment is adopted without changes to the proposed text as published in the March 18, 2022 issue of the *Texas Register* (47 TexReg 1410) and will not be republished. The adopted amendment updates the SBEC's petition procedures to allow for increased ease in submitting a petition for rulemaking for the SBEC's consideration.

**REASONED JUSTIFICATION:** Texas Government Code (TGC), §2001.021, requires that procedures to petition for the adoption of rule changes be adopted by rule. To comply with statute, the SBEC rules in 19 TAC Chapter 250, Subchapter B, establish procedures for SBEC petition for rulemaking in §250.20, Petition for Adoption of Rules or Rule Changes.

The adopted amendment to §250.20(a) updates the SBEC's petition procedures, including the petition form included as Figure: 19 TAC §250.20(a), to improve efficiency by ensuring that an interested person can submit the petition electronically. In addition, the adopted amendment to Figure: 19 TAC §250.20(a)

specifies one Texas Education Agency (TEA) division as the collection point for all petitions submitted to the SBEC and allows the petitioner to provide an email address on the petition form. This ensures timely acknowledgement, communication, review, status, and final decision of a petition by TEA staff for consideration by the SBEC at a future meeting.

The adopted new §250.20(d)(5) allows the SBEC the opportunity to deny a petition for any other reason the SBEC determines is grounds for denial. This clarifies that SBEC has the authority to deny for any reasons not specified in the enumerated list in subsection (d).

The adopted amendment to §250.20 also includes technical edits to improve readability.

**SUMMARY OF COMMENTS AND RESPONSES.** The public comment period on the proposal began March 18, 2022, and ended April 18, 2022. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the April 29, 2022 meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of the amendment to §250.20 at the June 17, 2022 SBOE meeting.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.035(b), which requires the Texas Education Agency (TEA) to provide the SBEC's administrative functions and services; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; and TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.

**CROSS REFERENCE TO STATUTE.** The adopted amendments implement Texas Education Code (TEC), §21.035(b) and §21.041(a) and (b)(1), and Texas Government Code (TGC), §2001.021.

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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Cristina De La Fuente-Valadez

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## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 266. MEDICAID HOSPICE PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts in the Texas Administrative Code (TAC), Title 26, Part 1, new Chapter 266, Medicaid Hospice Program, Subchapters A - C, comprised of §§266.101, 266.103, 266.201, 266.203, 266.205, 266.207, 266.209, 266.211, 266.213, 266.215, 266.217, 266.219, 266.221, 266.223, 266.225, 266.227, 266.301, 266.303, 266.305, 266.307, 266.309, and 266.311.

Sections 266.101, 266.203, 266.217, and 266.219 are adopted with changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1428). These rules will be republished.

Sections 266.103, 266.201, 266.205, 266.207, 266.209, 266.211, 266.213, 266.215, 266.221, 266.223, 266.225, 266.227, 266.301, 266.303, 266.305, 266.307, 266.309, and 266.311 are adopted without changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1428). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to update and relocate the Medicaid Hospice Program rules from 40 TAC Chapter 30 to 26 TAC Chapter 266 as part of the consolidation of HHSC's rules in 26 TAC. The repeal of the rules in 40 TAC Chapter 30 is adopted elsewhere in this issue of the *Texas Register*.

The adoption of new 26 TAC Chapter 266 will make HHSC's Medicaid Hospice Program rules consistent with the federal Medicare hospice regulations, add definitions used in the chapter, include details of utilization review policy requirements, such as describing what the individualized plan of care must include, types of required documentation that a hospice must maintain, and specifics regarding the certification of terminal illness, and update standards to protect the health and safety of individuals receiving hospice care.

The adopted new rules incorporate the federal rate changes in Title 42, Code of Federal Regulations (CFR), Chapter IV, Part 418, Subpart G, Payment for Hospice Care, that HHSC implemented on January 1, 2016. These changes allow providers to be paid at a higher rate during the first 60 days of routine home care and during the final seven days. Additionally, the new rules create an annual aggregate cap and align it with the federal fiscal year. The proposed new rules also align hospice election periods to those in 42 CFR, Chapter IV, Part 418, Subpart B, §418.21 Duration of hospice care coverage - Election periods.

The new rules also include hospice documentation requirements, recoupment of payments, and the option to request an informal review of and appeal proposed recoupment.

The new rules also update agency names, replace references to the "initial period of care" with references to the "initial election period," and replace references to "recipient" or "beneficiary" with references to "individual."

### COMMENTS

The 31-day comment period ended April 18, 2022.

During this period, HHSC received comments regarding the proposed rules from three commenters, including the Texas Academy of Physician Assistants, the Texas New Mexico Hospice Or-

ganization, and the Texas Medical Association. A summary of comments relating to the rules and HHSC responses follows.

Comment: A commenter recommended that HHSC change the term "palliative care" used in proposed new §266.217(f)(2) to "supportive palliative care" because the latter term is the term defined in Texas Health and Safety Code §142A.0001, and that §142A.0002 provides that notwithstanding any other law, a reference in this code or other law to palliative care means supportive palliative care. The commenter also provided information that this change in terminology has been made in another set of HHSC rules.

Response: HHSC declines to make the recommended changes. While reviewing the recommendations, HHSC noted that the term "palliative care" was removed from 40 TAC §30.4, relating to Definitions, in the proposed repeal of 40 TAC Chapter 30. HHSC also noted that 40 TAC Chapter 30 does not use the term "palliative care" elsewhere in the chapter. HHSC also noted that 26 TAC §266.217(f)(2) is the only rule in which "palliative care" is used in 26 TAC Chapter 266. Therefore, HHSC made a change in 26 TAC §266.217(f)(2) to replace "palliative care" with "hospice services," the term that is used throughout the chapter.

Comment: A commenter recommends physician assistants be included since the language in the rule mentions physicians and nurse practitioners regarding hospice care. Physician assistants are also members of the advanced practice providers team.

Response: HHSC agrees with the recommendation and made changes in §266.101 to add "physician assistant" in the definition of "attending physician" and to add a definition of "physician assistant."

Comment: A commenter expressed concern that 40 TAC §30.14(b) currently only requires a physician narrative that clearly identifies the reasons the individual is considered terminally ill, whereas in proposed §266.203(c)(2), a physician narrative would have to state "individual-specific clinical findings of signs and symptoms, anthropometric measurements, weights, oral intake, and laboratory and diagnostic testing results supporting the conclusion the individual is terminally ill." The commenter recommends that HHSC not heighten the requirements for physician narratives because the clinical findings required by proposed §266.203(c)(2) are not always relevant to a physician's determination that an individual is terminally ill and because requiring physicians to fulfill a new checklist when writing narratives increases the administrative burden on physicians, which takes time away from patients and contribute significantly to physician burnout. The changes the commenter recommended in §266.203(c)(2) would require a physician narrative to state the "individual-specific clinical findings, such as laboratory and diagnostic testing results, that support the physician's judgment that the individual is terminally ill."

Response: HHSC agrees with the comment and made changes in §266.203(c)(2) regarding the content of a physician narrative. However, the changes made will require a physician narrative to state the "individual-specific clinical course, exam findings, and laboratory and diagnostic testing results, that support the physician's judgment that the individual is terminally ill."

Comment: A commenter recommended that child life specialist services be added to the list of services in proposed §266.211(3) that supplement the skilled nursing care provided as part of continuous home care. Child life specialist services can help to reduce the stress and anxiety experienced by children who are terminally ill or involved in the lives of terminally ill family members.

Providing for such services would further the goal of Medicaid hospice care to bring care and comfort to the terminally ill individual during the final months of their life.

Response: HHSC notes that this is outside the scope of this rule project; however, HHSC will consider in future hospice rule projects.

Comment: A commenter recommended changes to proposed §266.217(e) and proposed §266.219(c) to clarify that the recoupments under §266.217 and §266.219 are subject to the same due process standards as other recoupments in Chapter 266. The commenter recommended adding "pursuant to Section 266.225 and Section 266.227 of this Subchapter."

Response: HHSC agrees with the recommendation and added "pursuant to §266.225 and §266.227 of this subchapter" in proposed §266.217(e) and proposed §266.219(c) as suggested.

HHSC made revisions to §266.101 to add a definition of "APRN--Advanced practice registered nurse" and to add "APRN" in the definition of "Attending physician." These changes are made because an APRN is also a member of the hospice advanced practice providers team. Because of the new definitions added in §266.101, changes are also made to reformat the section. "Advanced practice registered nurse" is replaced with "APRN" throughout the section.

"APRN" is also added to the definition of "IDT--Interdisciplinary team" to change "RN" to "an APRN who is an employee or under contract with the hospice and may perform the assessment described in §266.203(d) of this chapter (relating to Certification of Terminal Illness). The change is made to clarify that a hospice APRN must be included as a member of an IDT. Minor edits were also made in the definition of "IDT--Interdisciplinary team."

The definitions of "Licensed vocational nurse" and "RN--Registered nurse" were revised to replace "currently licensed by the Texas Board of Nursing" with "licensed under Texas Occupations Code Chapter 301." The changes are made to reference the Texas state law that provides for the licensing of nurses.

HHSC made a revision to §266.203(d) to change "hospice advanced practice RN" to "hospice APRN." The change is made to use the acronym "APRN" that was added in §266.101.

## SUBCHAPTER A. INTRODUCTION

### 26 TAC §266.101, §266.103

#### 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; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

#### §266.101. Definitions.

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

Individual subchapters may have definitions that are specific to the subchapter.

(1) APRN--Advanced practice registered nurse. A registered nurse licensed under Texas Occupations Code Chapter 301 to practice as an advanced practice registered nurse.

(2) Attending physician--A person who:

(A) is any of the following:

(i) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs that function or action;

(ii) an APRN who meets the training, education, and experience requirements as described in 42 CFR §410.75(b); or

(iii) a physician assistant who meets the requirements in 42 CFR §410.74(c); and

(B) is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

(3) Cap year--The 12-month period ending September 30 used in the application of the caps on hospice reimbursement specified in §266.217 of this chapter (relating to Medicaid Hospice Payments and Limitations).

(4) CFR--Code of Federal Regulations.

(5) CHC--Continuous home care. A category of care provided during a period of crisis consisting primarily of skilled nursing care.

(6) CMS--Centers for Medicare and Medicaid Services. The federal agency that provides funding and oversight for the Medicare and Medicaid programs.

(7) Crisis--A sudden or severe intensification of symptoms that appropriate medical intervention and nursing services could reasonably be expected to ameliorate. Expected fluctuations in an individual's condition related to the end of life process are not a crisis.

(8) Curative--Designed to restore a person to health.

(9) Employee--An employee, as defined in the Social Security Act §210(j) (42 U.S.C. §410), of the hospice or, if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. The term "employee" also refers to a volunteer under the jurisdiction of the hospice.

(10) HHSC--Texas Health and Human Services Commission.

(11) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions.

(12) IDT--Interdisciplinary team. An interdisciplinary team must include persons who are qualified and competent to practice in the following professional roles:

(A) physician who is an employee or under contract with the hospice who may also be the hospice medical director or the hospice medical director's designee;

(B) an APRN who:

(i) is an employee or under contract with the hospice; and

(ii) may perform the assessment described in §266.203(d) of this chapter (relating to Certification of Terminal Illness);

- (C) a registered nurse;
- (D) a social worker; and
- (E) a pastoral or other counselor.

(13) Licensed vocational nurse--A nurse licensed under Texas Occupations Code Chapter 301 to practice vocational nursing.

(14) Period of crisis--A period of time during which an individual requires continuous care that is primarily skilled nursing care to achieve palliation or management of acute medical symptoms.

(15) Physician--A doctor of medicine or doctor of osteopathy currently licensed by the Texas Medical Board to practice medicine or osteopathy at the time and place the service is provided.

(16) Physician Assistant--An individual who is licensed as a physician assistant under Texas Occupations Code Chapter 204.

(17) Representative--An individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

(18) RN--Registered nurse. An individual licensed under Texas Occupations Code Chapter 301 to practice professional nursing.

(19) SIA--Service intensity add-on. Payments for direct patient care provided by a social worker or an RN during the last seven days of life when provided during routine home care.

(20) Skilled nursing care--Tasks that are determined by the assessing RN to require the skill of a licensed nurse when considering the inherent complexity of the task, the condition of the individual, and the accepted standards of medical and nursing practice.

(21) Social worker--A person who is currently licensed as a social worker under Texas Occupations Code Chapter 505.

(22) TAC--Texas Administrative Code.

(23) Terminally ill--The individual has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

(24) TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.

(25) Utilization review--Medical record review of paid hospice claims to determine if provider compliance meets the requirements for payment of 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.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## SUBCHAPTER B. UTILIZATION REVIEW

**26 TAC §§266.201, 266.203, 266.205, 266.207, 266.209, 266.211, 266.213, 266.215, 266.217, 266.219, 266.221, 266.223, 266.225, 266.227**

### 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; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

#### §266.203. *Certification of Terminal Illness.*

##### (a) Written certification.

(1) For the initial election period, a hospice must obtain a signed and dated Physician Certification of Terminal Illness Form that meets the requirements of this section before the hospice submits an initial request for payment, but no more than 15 days before the election period begins.

(2) For an election period after the initial election period, a hospice must obtain a signed and dated Physician Certification of Terminal Illness Form that meets the requirements of this section before the previous period expires, but no more than 15 days before the next election period begins.

(3) The hospice must submit the Physician Certification of Terminal Illness Form to the TMHP Long Term Care Online Portal.

(b) Oral certification. If a hospice does not obtain the written certification required by subsection (a)(1) of this section within two days after an initial election period begins, the hospice must obtain an oral certification that meets the requirements of this section no later than two days after the initial election period begins. The hospice must obtain a written certification before it submits a claim for payment. An election period is described in §266.201 of this subchapter (relating to Duration of Hospice Care Coverage: Election Periods).

(c) Content of certification. An oral or written certification must:

(1) specify that an individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course;

(2) include a physician narrative that states individual-specific clinical course, exam findings, and laboratory and diagnostic testing results that support the physician's judgement that the individual is terminally ill; and

(3) include clinical information that supports the medical prognosis, which may be provided orally for an oral certification and must be provided with accompanying documentation for a written certification.

(d) Additional requirement for election period after the subsequent 90-day election period. To determine an individual's continued eligibility for hospice care for an election period after the subsequent

90-day election period, a hospice physician or hospice APRN must perform a face-to-face assessment of the individual.

(1) The hospice must ensure a face-to-face assessment is performed before each subsequent election period begins, but no more than 30 days before the subsequent election period begins.

(2) For an individual who is dually eligible for Medicare and Medicaid, a Medicare face-to-face encounter satisfies the requirement for a face-to-face assessment.

(e) Sources of certification. The hospice must obtain the certification required by subsection (a) or (b) of this section from:

(1) for the initial election period:

(A) the medical director of the hospice or a physician who is a member of the hospice IDT; and

(B) the individual's attending physician, if the individual has an attending physician; and

(2) for an election period after the initial election period, a physician described in paragraph (1)(A) of this subsection.

(f) Documentation.

(1) After the hospice receives a certification:

(A) for an oral certification, the hospice physician or RN must make an entry in the individuals' hospice record that includes the name of the physician who made the oral certification, the clinical information that supports the prognosis, the date the hospice received the certification, the signature of the staff person who makes the entry, and the date of the entry; and

(B) for a written certification, the hospice staff must file the written certification and supporting documentation in the individual's hospice record.

(2) For an election period after the subsequent 90-day election period, the hospice record must include clearly labeled documentation of the face-to-face assessment.

*§266.217. Medicaid Hospice Payments and Limitations.*

(a) Medicaid hospice per diem and hourly rates. For each day that an individual is under the care of a hospice, the hospice is paid an amount applicable to the type and intensity of the services furnished to the individual. HHSC pays a daily rate for routine home care, in-patient respite care, and general inpatient care. For CHC and the SIA, the amount of payment is based on the number of hours of care furnished to the individual on that day.

(1) Routine home care. The hospice is paid the routine home care rate for each day the individual is at home, under the care of the hospice, and not receiving CHC. The appropriate routine home care rate is determined as follows.

(A) For routine home care delivered during the first 60 days an individual is receiving hospice care, the routine home care rate is the higher base payment rate.

(B) For routine home care delivered after the first 60 days an individual is receiving hospice care, the routine home care rate is the reduced base payment rate.

(C) If an individual receiving hospice services is discharged and readmitted to hospice not more than 60 days after the discharge, HHSC will count all days the individual received hospice services since the original hospice admission in determining the proper base payment rate.

(D) If an individual receiving hospice services is discharged and readmitted to hospice more than 60 days after the discharge, HHSC disregards the previous hospice admission in determining the proper base payment rate.

(2) Service Intensity Add-on. The hospice is paid an SIA in addition to the routine home care rate for visits provided by an RN or social worker during the last seven days of a hospice election ending with an individual discharged due to death. The SIA is the CHC hourly rate, multiplied by the number of hours of care provided by the RN or social worker, up to 4 hours during a 24-hour day that begins and ends at midnight. To claim the SIA, a hospice must submit:

(A) documentation of the in-person, skilled services provided by the RN, the social worker, or both;

(B) the times the services were provided; and

(C) the Individual Election/Cancellation/Update Form indicating the hospice election was canceled due to death.

(3) Continuous Home Care. The hospice is paid the CHC rate when direct patient care is provided. The CHC rate is divided by 24 hours to arrive at an hourly rate. A minimum of 8 hours of direct patient care must be provided per day. For every hour, or part of an hour, direct patient care is furnished, the hourly rate is paid to the hospice up to 24 hours a day. HHSC pays for a maximum of five consecutive days of CHC unless HHSC receives and grants a request for an extension of CHC. If the hospice ceases to provide direct patient care, CHC has ended.

(4) Inpatient respite care. The hospice is paid at the inpatient respite care rate for each day on which the individual is in an approved inpatient facility and is receiving respite care. Payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is at the routine home care rate.

(A) An individual who receives hospice respite care in a nursing facility and returns home after the respite care does not have to be in a Medicaid bed in the nursing facility.

(B) Respite care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (c) of this section.

(C) If the individual dies while receiving inpatient respite care, HHSC pays the inpatient respite care rate for the day of death.

(5) General Inpatient Care. Payment is made at the general inpatient rate for each day on which the individual is in an approved inpatient facility and is receiving general inpatient care.

(A) The general inpatient care rate is paid for the day of admission and all subsequent inpatient days except the day of discharge.

(B) For the day of discharge, HHSC pays the routine home care rate.

(C) If the individual dies while in an inpatient facility, HHSC pays the general inpatient care rate for the day of death.

(D) General inpatient care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (c) of this section.

(b) Medicaid payments for physician services. The hospice:



(1) is paid for hospice physician services in accordance with the HHSC reimbursement rates for physician services;

(2) is paid for physician services on the day of discharge if the physician provides direct patient services on that day;

(3) is not paid for hospice physician services when the services are provided by physicians who are not on staff with the hospice or who are independent contractors under contract with the hospice; and

(4) must include physician services in the hospice plan of care and clinical records.

(c) Medicaid payment limitations for inpatient care. During the cap year, the aggregate number of inpatient hospice care days must not exceed 20 percent of the total number of hospice care days for the same cap year. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. A day counts as an inpatient hospice care day only if it is a day on which the individual who has elected hospice care receives inpatient respite care or general inpatient care. The limitation is calculated as follows.

(1) The maximum allowable number of inpatient days is calculated by multiplying the total number of days of Medicaid hospice care by 0.2.

(2) If the total number of days of inpatient care furnished to Medicaid hospice patients is less than or equal to the maximum, no adjustment is necessary.

(3) If the total number of days of inpatient care exceeds the maximum allowable number, the limitation is determined by:

(A) calculating a ratio of the maximum allowable days to the number of actual days of inpatient care and multiplying this ratio by the total reimbursement for inpatient care that was made;

(B) multiplying excess inpatient care days by the reduced base payment routine home care rate;

(C) adding together the amounts calculated in subparagraphs (A) and (B) of this paragraph; and

(D) comparing the amount calculated under subparagraph (C) of this paragraph with interim payments made to the hospice for inpatient care during the cap year.

(d) Medicaid aggregate payment limitations. During the cap year, the aggregate payments to a hospice are subject to an annual aggregate cap. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. A hospice's aggregate cap is calculated by multiplying the adjusted cap amount, as determined under paragraph (1) of this subsection, by the number of Medicaid beneficiaries, as determined under paragraph (2) of this subsection.

(1) Cap Amount. The cap amount was set at \$6,500 in 1983 and is updated using one of two methodologies described in subparagraphs (A) and (B) of this paragraph.

(A) For accounting years that end on or after October 1, 2025, the cap amount is adjusted for inflation by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI) for urban consumers that is published by the Bureau of Labor Statistics. This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year.

(B) For accounting years that end before October 1, 2025, the cap amount is the cap amount for the preceding accounting year updated by the percentage update to payment rates for hospice care for services furnished during the fiscal year beginning on October

1st preceding the beginning of the accounting year as determined pursuant to the Social Security Act §1814(i)(1)(C) (42 U.S.C. §1395f), including the application of any productivity or other adjustments to the hospice percentage update.

(2) Number of Medicaid Beneficiaries. For purposes of this paragraph, HHSC adopts by reference the streamlined methodology and the patient-by-patient proportional methodology in 42 CFR §418.309(b) and (c), effective October 1, 2018, to determine the number of Medicaid beneficiaries for purposes of the aggregate cap. A hospice determines the number of Medicaid beneficiaries using the same methodology it uses to determine the number of Medicare beneficiaries under 42 CFR §418.309(b) or (c).

(e) Recoupment of Excess Payments. HHSC recoups payments in excess of the limitations for inpatient care and the aggregate payment limitations, pursuant to §266.225 and §266.227 of this subchapter (relating to Informal Review and Review Decision and Notice), from subsequent Medicaid hospice provider claims.

(f) Pediatric Concurrent Care.

(1) An individual under 21 years of age who elects to receive Medicaid hospice care may receive Medicaid services related to the treatment of the terminal illness, or a related condition, for which the hospice care was elected concurrently with the hospice care.

(2) The hospice is responsible for hospice services related to the terminal illness or a related condition. The hospice is not responsible for acute care services related to the treatment of the terminal illness or a related condition or for services unrelated to the terminal illness or a related condition.

§266.219. *Utilization Review and Control Activities Performed by HHSC.*

(a) Hospice staff must cooperate with HHSC staff during utilization review of hospice services and the review of hospice clinical records.

(b) The hospice must respond within 30 calendar days after HHSC makes a request for information.

(c) HHSC staff review most claims for payment after they are paid and recoup any overpayments, pursuant to §266.225 and §266.227 of this subchapter (relating to Informal Review and Review Decision and Notice).

(d) HHSC staff review claims for the SIA before paying the SIA.

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

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SUBCHAPTER C. CONTRACTING  
REQUIREMENTS

**26 TAC §§266.301, 266.303, 266.305, 266.307, 266.309, 266.311**

**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; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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**CHAPTER 745. LICENSING**

The Texas Health and Human Services Commission (HHSC) adopts 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 Texas Administrative Code, Title 26, Part 1, Chapter 745, Licensing.

Amended §§745.115, 745.139, and 745.8605 are adopted without changes to the proposed text as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3030). These rules will not be republished.

**BACKGROUND AND JUSTIFICATION**

The purpose of the rulemaking is to support Governor Abbott's May 31, 2021, proclamation declaring a state of disaster in certain Texas counties and for affected 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 Texas Human Resources Code and all other relevant laws to the extent necessary for HHSC to comply with this direction. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires the rules to be adopted with an expedited effective date.

In July 2021 and January 2022, HHSC adopted emergency rules relating to operations that are exempt from licensure and regulation by HHSC. 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 provided 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 outlined the enforcement actions HHSC may take if a GRO provides care or shelter to an unlawfully present individual.

The present rulemaking substantially adapts the content of the emergency rules into standard rules. Accordingly, the amended rules 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; (2) clarify that an existing rule that allows HHSC Child Care Regulation (CCR) to regulate an exempt program, when combined with a regulated program does not apply to the exempt operations in the proposed new rules; and (3) incorporate the enforcement components in the emergency rule into CCR's existing enforcement framework.

**COMMENTS**

The 31-day comment period ended June 20, 2022. During this period, HHSC did not receive any comments regarding the proposed rules.

**SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION**  
**DIVISION 2. EXEMPTIONS FROM REGULATION**

**26 TAC §745.115, §745.139**

**STATUTORY AUTHORITY**

The amended rules 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 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 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 L. ENFORCEMENT ACTIONS**

## DIVISION 1. OVERVIEW OF ENFORCEMENT ACTIONS

### 26 TAC §745.8605

#### STATUTORY AUTHORITY

The amended rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 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 745. LICENSING

### SUBCHAPTER F. BACKGROUND CHECKS

## DIVISION 2. REQUESTING BACKGROUND CHECKS

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

The Texas Health and Human Services Commission (HHSC) adopts amendments to §745.609, concerning What types of background checks are required for persons at my operation; §745.611, concerning Which persons at my operation require either a fingerprint-based criminal history check or a name-based Texas criminal history check; §745.613, concerning Which persons at my operation must have an out-of-state criminal history check, an out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check; §745.615, concerning What types of background checks are required for persons at listed family homes that only provide care to related children; and §745.617, concerning How do I submit a request for a background check.

The amendments to §§745.609, 745.611, 745.613, 745.615, and 745.617 are adopted without changes to the proposed text as published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1841). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Senate Bill 1061, 87th Legislature, Regular Session, 2021, which amends §42.159 and §42.206 of Texas Human Resources Code (HRC), relating to Small Employer-Based Child Care (SEBCC) Operations and Shelter Care Operations. Currently, persons required to have a background check at these operation types are only

required to have a name-based Texas criminal history check. The amendments will now require most persons at these operations to submit fingerprints so a fingerprint-based criminal history check may be conducted. The change will allow HHSC Child Care Regulation (CCR) access to the Federal Bureau of Investigations National Rap Back Service by receiving immediate notification of a change in a person's criminal history. The amendments will also make the criminal history background check requirements for SEBCC Operations and Shelter Care Operations more consistent with the criminal history background check requirements for other operation types that CCR regulates.

#### COMMENTS

The 31-day comment period ended May 9, 2022. During this period, HHSC did not receive any comments regarding the proposed rules.

#### 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 Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The 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 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Texas Health and Human Services Commission (HHSC) adopts 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 Texas Administrative Code, Title 26, Part 1, Chapter 748, Minimum Standards for General Residential Operations.

Amended §748.7 and new §§748.81, 748.83, and 748.85 are adopted without changes to the proposed text as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3033). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The purpose of the rulemaking is to support Governor Abbott's May 31, 2021, proclamation declaring a state of disaster in certain Texas counties and for affected 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 Texas Human Resources Code and all other relevant laws to the extent necessary for HHSC to comply with this direction. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires the rules to be adopted with an expedited effective date.

In July 2021 and January 2022, HHSC adopted emergency rules 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 provided 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 outlined the enforcement actions HHSC may take if a GRO provides care or shelter to an unlawfully present individual.

The present rulemaking substantially adapts the content of the emergency rules into standard rules. Accordingly, the new rules and amendment reflect the intent and content of the emergency rule but have been updated to (1) clarify that rules relating to family residential centers are only applicable when a GRO may provide care to children who are unlawfully present in the United States and in the custody of the federal government; and (2) remove the definition for the term General Residential Operation because the term is defined elsewhere in Chapter 748.

#### COMMENTS

The 31-day comment period ended June 20, 2022. During this period, HHSC did not receive any comments regarding the proposed rules.

### SUBCHAPTER A. PURPOSE AND SCOPE

#### 26 TAC §748.7

##### STATUTORY AUTHORITY

The amended rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 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. DEFINITIONS AND SERVICES

### DIVISION 3. CARE OF UNLAWFULLY PRESENT INDIVIDUALS

#### 26 TAC §§748.81, 748.83, 748.85

##### STATUTORY AUTHORITY

The new rules 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 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 30. MEDICAID HOSPICE PROGRAM

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts the repeal of rules in Texas Administrative Code (TAC) Title 40, Part 1, Chapter 30, concerning Medicaid Hospice Program consisting of §§30.2, 30.4, 30.10, 30.12, 30.14, 30.16, 30.18, 30.20, 30.30, 30.34, 30.36, 30.40, 30.50, 30.52, 30.54, 30.60, 30.62, 30.90, 30.92, and 30.100.

The repeals are adopted without changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1444). The repeals will not be republished.

#### BACKGROUND AND JUSTIFICATION

The repeal of 40 TAC Chapter 30 deletes rules of the former DADS from the TAC. HHSC adopts new rules governing the Medicaid Hospice Program in 26 TAC Chapter 266, elsewhere in this issue of the *Texas Register*.

#### COMMENTS

The 31-day comment period ended April 18, 2022.

During this period, HHSC did not receive any comments regarding the proposed rules.

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §30.2, §30.4

##### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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. ELIGIBILITY REQUIREMENTS

#### 40 TAC §§30.10, 30.12, 30.14, 30.16, 30.18, 30.20

##### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a

portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### SUBCHAPTER C. CONTRACTING AND DISCLOSURE REQUIREMENTS

#### 40 TAC §§30.30, 30.34, 30.36

##### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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### SUBCHAPTER D. PROVIDERS' CONDITIONS OF PARTICIPATION: OTHER SERVICES

#### 40 TAC §30.40

##### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the

health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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 Aging and Disability Services

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## SUBCHAPTER E. COVERED SERVICES

### 40 TAC §§30.50, 30.52, 30.54

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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## SUBCHAPTER F. REIMBURSEMENT

### 40 TAC §30.60, §30.62

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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## SUBCHAPTER I. MEDICAL REVIEW AND RE-EVALUATION

### 40 TAC §30.90, §30.92

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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SUBCHAPTER J. MISCELLANEOUS

40 TAC §30.100

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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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# REVIEW OF AGENCY RULES

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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.

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## Adopted Rule Reviews

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 Texas Administrative Code (TAC) Chapter 61, School Districts, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 61 relate to school districts and are organized under the following subchapters: Subchapter A, Board of Trustees Relationship, and Subchapter B, Special Purpose School Districts. The SBOE proposed the review of 19 TAC Chapter 61, Subchapters A and B, in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2777).

Relating to the review of 19 TAC Chapter 61, Subchapters A and B, the SBOE finds that the reasons for adopting Subchapters A and B

continue to exist and readopts the rules. No changes are necessary to Subchapters A and B as a result of the review.

The SBOE received no comments related to the review of Subchapters A and B.

TRD-202202558

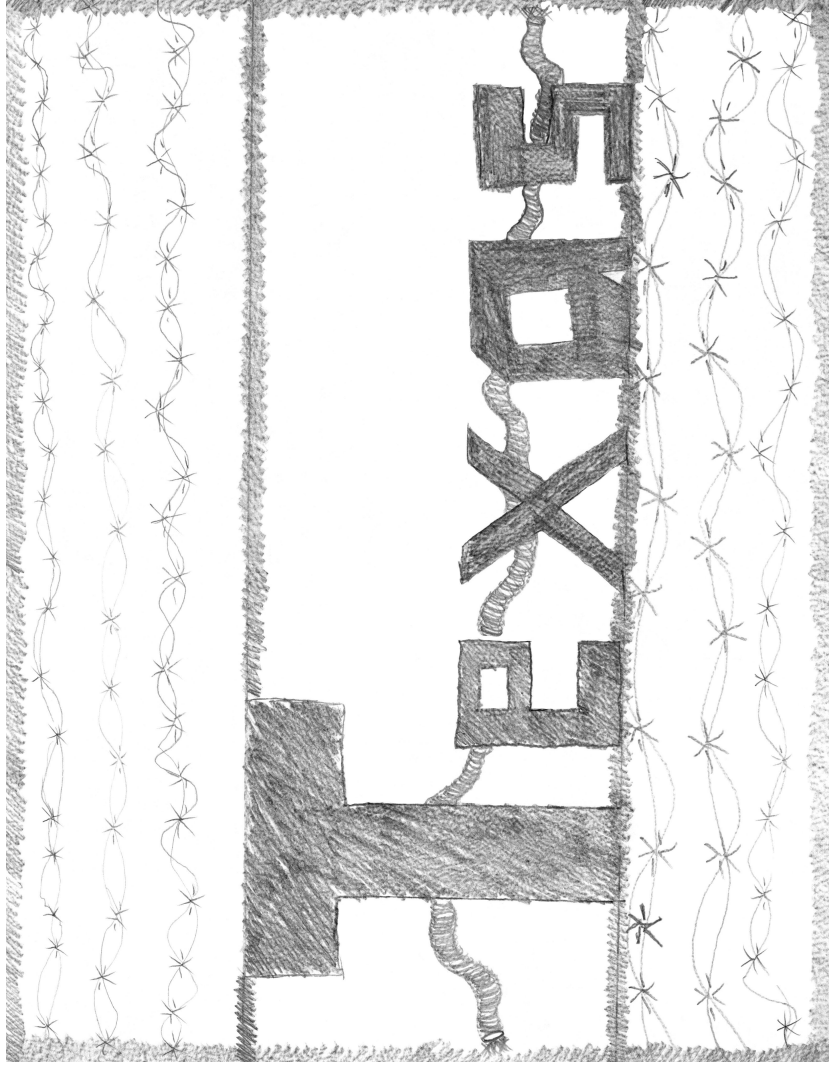
Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 7, 2022





# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 26 TAC §745.275(a)

Type of Requirements	Requirements to Be Completed
(1) Public Notice Requirements	<p>(A) The notice must include:</p> <ul style="list-style-type: none"> <li>(i) Your name and address;</li> <li>(ii) The name and address of the child care operation, if already established, or the address where you propose to provide child care services;</li> <li>(iii) A description of the population to be served (except for the provision of trafficking victim services, if applicable), the services to be provided, and the number of children expected to be served;</li> <li>(iv) The date, time, and location of the public hearing;</li> <li>(v) A statement that a person may submit written comments or written information to Licensing concerning the application or the request to <u>amend your permit</u> [<del>increase capacity</del>] instead of or in addition to appearing at the public hearing; and</li> <li>(vi) The name, address, and telephone number of the Licensing representative that will attend the public hearing;</li> </ul> <p>(B) The required notice must be published either:</p> <ul style="list-style-type: none"> <li>(i) After we accept your application or evaluate your request to amend your permit, as applicable; or</li> <li>(ii) For applications and requests to amend your permit relating to the provision of treatment services to children with emotional disorders, after we approve your completed General Residential Operations – Additional Operation Plan form and either accept your application or evaluate your request to amend your permit, as applicable.</li> </ul> <p>(C) You must publish the notice about the public hearing at least 10 days before the date of the public hearing;</p> <p>(D) You must publish the notice in a newspaper of general circulation in the community where your child care services</p>

	<p>are or will be provided; and</p> <p>(E) You must provide a copy of the notice to the school district superintendent, the governing body of the community, and the local law enforcement agency at least 10 work days before the hearing.</p>
(2) Public Hearing Requirements	<p>(A) You must hold the hearing in a location easily accessible to the community where the services are or will be provided;</p> <p>(B) You must schedule the hearing and open it for at least four hours during the normal business day (Monday - Friday) or early evening hours;</p> <p>(C) If you are applying for a permit, you must hold the hearing no later than one month after the date that we accept your application. If you are requesting to amend your permit [<del>to increase capacity</del>], you must hold the hearing after we have evaluated your request [<del>to increase capacity</del>];</p> <p>(D) You must notify us of the time, date, and location of the hearing at least 10 days before the hearing; and</p> <p>(E) You must facilitate the hearing.</p>
(3) Verbatim Record and Report of Public Comment from the Community	<p>Within 10 work days of the hearing, you must submit to us:</p> <p>(A) The verbatim record of the testimony given at the public hearing; and</p> <p>(B) A completed summary Report of Public Comment from the Community form that we furnish you that includes the following documentation:</p> <p style="padding-left: 40px;">(i) A copy of the newspaper notice, the date the notice was published, and the name of the newspaper in which the notice appeared;</p> <p style="padding-left: 40px;">(ii) Proof that you gave the school district superintendent, local law enforcement, and the governing body of the community an opportunity to comment on the application or the request to amend your permit [<del>to increase capacity</del>];</p> <p style="padding-left: 40px;">(iii) Your responses to any negative comments;</p>

	<p>(iv) The amount of local resources available to support children you propose to serve, including physical and mental health services, educational services, law enforcement, and other services;</p> <p>(v) The impact of the proposed services on the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the effect, if any, on the children you propose to serve, including the estimated impact on the current ratio in the school in relation to the average ratio statewide, and the ratio in terms of the probability of adverse impact on children in care;</p> <p>(vi) The impact of the proposed services on the community and the effect on opportunities for social interaction for the children proposed to be served, including social and youth groups, spiritual and religious organizations, and youth employment groups or agencies; and</p> <p>(vii) Any other documentation available to support the position of the report.</p>
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Figure: 26 TAC §745.435(a)

<b><u>Operation Type or Types</u></b>	<b><u>Notify Licensing No Later Than</u></b>
<u>(1) Licensed Child-Care Home.</u>	<u>15 days prior to the move.</u>
<u>(2) School-Age Program, Before or After-School Program, Child-Care Center, General Residential Operation, Child-Placing Agency.</u>	<u>30 days prior to the move.</u>

Figure: 26 TAC §748.303(a)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES.  (A)(ii) As soon as possible, but no later than 2 hours after the child's death.	(B)(i) YES.  (B)(ii) As soon as possible, but no later than 2 hours after the child's death.	(C)(i) YES.  (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES.  (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES.  (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO.  (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES.  (A)(ii) As soon as you become aware of it.	(B)(i) YES.  (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO.  (C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in	(A)(i) YES.  (A)(ii) As soon as you become aware of it.	(B)(i) YES.  (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO.  (C)(ii) Not applicable.

<p>substantial physical injury to a child.</p>			
<p>(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.</p>	<p>(A)(i) YES.  (A)(ii) As soon as you become aware of it.</p>	<p>(B)(i) YES.  (B)(ii) Immediately after ensuring the safety of the child.</p>	<p>(C)(i) NO.  (C)(ii) Not applicable.</p>



<p>(6) A child is indicted, charged, or arrested for a crime; or when law enforcement responds to an alleged incident at the operation that could result in criminal charges being filed against the child.</p>	<p>(A)(i) YES.  (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.</p>	<p>(B)(i) YES.  (B)(ii) As soon as you become aware of it.</p>	<p>(C)(i) NO.  (C)(ii) Not applicable.</p>
<p>(7) A child is issued a ticket at school by law enforcement or any other citation that does not result in the child being detained.</p>	<p>(A)(i) NO.  (A)(ii) Not applicable.</p>	<p>(B)(i) YES.  (B)(ii) As soon as possible, but no later than 24 hours after you become aware of it.</p>	<p>(C)(i) NO.  (C)(ii) Not applicable.</p>
<p>(8) The unauthorized absence of a child who is developmentally or chronologically under 6 years old.</p>	<p>(A)(i) YES.  (A)(ii) Within 2 hours of notifying law enforcement.</p>	<p>(B)(i) YES.  (B)(ii) Within 2 hours of notifying law enforcement.</p>	<p>(C)(i) YES.  (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.</p>
<p>(9) The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.</p>	<p>(A)(i) YES.  (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.</p>	<p>(B)(i) YES.  (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.</p>	<p>(C)(i) YES.  (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.</p>

<p>(10) The unauthorized absence of a child who is 13 years old or older.</p>	<p>(A)(i) YES.</p> <p>(A)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.</p>	<p>(B)(i) YES.</p> <p>(B)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.</p>	<p>(C)(i) YES.</p> <p>(C)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.</p>
<p>(11) A child in your care contracts a communicable disease that the law requires you to report to the <u>Texas</u> Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).</p>	<p>(A)(i) YES, unless the information is confidential.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(C)(i) NO.</p> <p>(C)(ii) Not applicable.</p>

(12) A suicide attempt by a child.	(A)(i) YES.  (A)(ii) As soon as you become aware of the incident.	(B)(i) YES.  (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO.  (C)(ii) Not applicable.
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Figure: 26 TAC §748.303(e)

Serious Incident	(i) To Licensing?  (ii) If so, when?	(i) To Parents?  (ii) If so, when?
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES.  (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES.  (B)(ii) As soon as possible, but no later than 24 hours after the incident.
<p>(3) <u>You must temporarily do the following to comply with a declared state of disaster under Chapter 418, Government Code:</u></p> <ul style="list-style-type: none"> <li>• <u>Move your operation to a new location that is not noted on your permit; or</u></li> <li>• <u>Provide care to any child at a location not noted on your permit (for example providing care to a child that needs to be quarantined at a different location from other children).</u></li> </ul>	<p>(A)(i) YES.</p> <p>(A)(ii) <u>As soon as possible, but no later than 24 hours after temporarily moving to or providing care at any location not noted on your permit.</u></p>	<p>(B)(i) YES.</p> <p>(B)(ii) <u>As soon as possible, but no later than 24 hours after temporarily moving to or providing care at any location not noted on your permit.</u></p>

<p>(4) [<del>3</del>] An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).</p>	<p>(A)(i) YES, unless the information is confidential.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>
<p>(5) [<del>4</del>] An allegation that a person under the auspices of your operation who directly cares for or has access to a child in the operation has abused drugs within the past seven days.</p>	<p>(A)(i) YES.</p> <p>(A)(ii) Within 24 hours after learning of the allegation.</p>	<p>(B)(i) NO.</p> <p>(B)(ii) Not applicable.</p>
<p>(6) [<del>5</del>] An investigation of abuse or neglect by an entity (other than the Texas Department of Family and Protective Services Child Care Investigations division) of an employee, professional level service provider, contract staff, volunteer, or other adult at the operation.</p>	<p>(A)(i) YES.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.</p>	<p>(B)(i) NO.</p> <p>(B)(ii) Not applicable.</p>
<p>(7) [<del>6</del>] Any of the following relating to an employee, professional level service provider, contract staff, volunteer, or other adult at the operation alleging commission of any crime as provided in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?):</p> <ul style="list-style-type: none"> <li>• An arrest;</li> <li>• An indictment;</li> <li>• An information regarding an official complaint accepted by a</li> </ul>	<p>(A)(i) YES.</p> <p>(A)(ii) As soon as you become aware of the situation.</p>	<p>(B)(i) NO.</p> <p>(B)(ii) Not applicable.</p>

<p>county or district attorney; or</p> <ul style="list-style-type: none"> <li>• An arrest warrant executed by law enforcement.</li> </ul>		
<p>(8) [<del>(7)</del>] A search warrant is executed by law enforcement at the operation.</p>	<p>(A)(i) YES.</p> <p>(A)(ii) As soon as you become aware of the situation.</p>	<p>(B)(i) NO.</p> <p>(B)(ii) Not applicable.</p>
<p>(9) [<del>(8)</del>] An allegation that an employee or caregiver:</p> <ul style="list-style-type: none"> <li>• Used a prohibited emergency behavior intervention technique, as outlined in §748.2451(b) of this chapter (relating to What types of emergency behavior intervention may I administer?);</li> <li>• Used a prohibited personal restraint technique, as outlined in §748.2605 of this chapter (relating to What personal restraint techniques are prohibited?); or</li> <li>• Used an emergency behavior intervention inappropriately, as outlined in §748.2463 of this chapter (relating to Are there any purposes for which emergency behavior intervention cannot be used?), §748.2705 of this chapter (What mechanical and other restraint devices are prohibited?), or §748.2801 of this chapter (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).</li> </ul>	<p>(A)(i) YES.</p> <p>(A)(ii) As soon as possible but no later than 24 hours after you become aware of the incident.</p>	<p>(B)(i) YES.</p> <p>(B)(ii) As soon as possible but no later than 24 hours after you become aware of the incident.</p>

Figure: 26 TAC §749.503(a)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES <sub>2</sub>  (A)(ii) As soon as possible, but no later than 2 hours after the child's death.	(B)(i) YES <sub>2</sub>  (B)(ii) As soon as possible, but no later than 2 hours after the child's death.	(C)(i) YES <sub>2</sub>  (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES <sub>2</sub>  (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES <sub>2</sub>  (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO <sub>2</sub>  (C)(ii) Not Applicable <sub>2</sub>
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES, including whether you plan to move the child until the investigation is complete.  (A)(ii) As soon as you become aware of it.	(B)(i) YES, including whether you plan to move the child until the investigation is complete.  (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO <sub>2</sub>  (C)(ii) Not applicable <sub>2</sub>

<p>(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in substantial physical injury to the child.</p>	<p>(A)(i) YES_</p> <p>(A)(ii) As soon as you become aware of it.</p>	<p>(B)(i) YES_</p> <p>(B)(ii) Immediately after ensuring the safety of the child.</p>	<p>(C)(i) NO_</p> <p>(C)(ii) Not applicable_</p>
<p>(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.</p>	<p>(A)(i) YES_</p> <p>(A)(ii) As soon as you become aware of it.</p>	<p>(B)(i) YES_</p> <p>(B)(ii) Immediately after ensuring the safety of the child.</p>	<p>(C)(i) NO_</p> <p>(C)(ii) Not applicable_</p>
<p>(6) A child is indicted, charged, or arrested for a crime; or when law enforcement responds to an alleged incident at the foster home that could result in criminal charges being filed against the child.</p>	<p>(A)(i) YES_</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.</p>	<p>(B)(i) YES_</p> <p>(B)(ii) As soon as you become aware of it.</p>	<p>(C)(i) NO_</p> <p>(C)(ii) Not applicable_</p>



<p>(7) A child is issued a ticket at school by law enforcement or any other citation that does not result in the child being detained.</p>	<p>(A)(i) NO<sub>2</sub></p> <p>(A)(ii) Not applicable.</p>	<p>(B)(i) YES<sub>2</sub></p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of it.</p>	<p>(C)(i) NO<sub>2</sub></p> <p>(C)(ii) Not applicable.</p>
<p>(8) The unauthorized absence of a child who is developmentally or chronologically under 6 years old.</p>	<p>(A)(i) YES<sub>2</sub></p> <p>(A)(ii) Within 2 hours of notifying law enforcement.</p>	<p>(B)(i) YES<sub>2</sub></p> <p>(B)(ii) Within 2 hours of notifying law enforcement.</p>	<p>(C)(i) YES<sub>2</sub></p> <p>(C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.</p>
<p>(9) The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.</p>	<p>(A)(i) YES<sub>2</sub></p> <p>(A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.</p>	<p>(B)(i) YES<sub>2</sub></p> <p>(B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.</p>	<p>(C)(i) YES<sub>2</sub></p> <p>(C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.</p>
<p>(10) The unauthorized absence of a child who is 13 years old or older.</p>	<p>(A)(i) YES<sub>2</sub></p> <p>(A)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing.</p> <p>However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child</p>	<p>(B)(i) YES<sub>2</sub></p> <p>(B)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing.</p> <p>However, you must report the child's absence immediately if the child has previously</p>	<p>(C)(i) YES<sub>2</sub></p> <p>(C)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing.</p> <p>However, you must report the child's absence immediately if the child has previously been alleged or determined to be a</p>

	has been abducted or has no intention of returning to the foster home.	been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the foster home.	trafficking victim, or you believe the child has been abducted or has no intention of returning to the foster home.
(11) A child in your care contracts a communicable disease that the law requires you to report to the Texas Department of State Health Services (DSHS) as specified in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential.  (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.  (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO.  (C)(ii) Not applicable.
(12) A suicide attempt by a child.	(A)(i) YES.  (A)(ii) As soon as you become aware of the incident.	(B)(i) YES.  (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO.  (C)(ii) Not applicable.

Figure: 26 TAC §749.503(e)

Serious Incident	(i) To Licensing?  (ii) If so, when?	(i) To Parents?  (ii) If so, when?
(1) Any incident that renders all or part of your agency or a foster home unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES  (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES  (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires a foster home to close.	(A)(i) YES  (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES  (B)(ii) As soon as possible, but no later than 24 hours after the incident.
<p>(3) <u>You must temporarily do the following to comply with a declared state of disaster under Chapter 418, Government Code:</u></p> <ul style="list-style-type: none"> <li>• <u>Move your operation to a new location that is not noted on your permit;</u></li> <li>• <u>Move a foster home to a new location that is not noted on the verification;</u></li> <li>• <u>Allow a foster home to provide care to any child at a location not noted on the verification (for example providing care to children that need to be quarantined at a different location from other children in the foster home noted on the verification).</u></li> </ul>	<p>(A)(i) <u>YES.</u></p> <p>(A)(ii) <u>As soon as possible, but no later than 24 hours after:</u></p> <ul style="list-style-type: none"> <li>• <u>Your operation temporarily moves to a new location that is not noted on your permit;</u></li> <li>• <u>A foster home temporarily moves to a new location that is not noted on the verification;</u> <u>or</u></li> <li>• <u>A foster home temporarily provides care to any child at a location not</u></li> </ul>	<p>(B)(i) <u>YES.</u></p> <p>(B)(ii) <u>As soon as possible, but no later than 24 hours after:</u></p> <ul style="list-style-type: none"> <li>• <u>Your operation temporarily moves to a new location that is not noted on your permit;</u></li> <li>• <u>A foster home temporarily moves to a new location that is not noted on the verification;</u> <u>or</u></li> <li>• <u>A foster home temporarily provides care to any child at</u></li> </ul>

	<u>noted on the verification.</u>	<u>a location not noted on the verification.</u>
(4) [ <del>3</del> ] An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential.  (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.  (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(5) [ <del>4</del> ] An allegation that a person under the auspices of your agency who directly cares for or has access to a child in the setting has abused drugs within the past seven days.	(A)(i) YES_  (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO_  (B)(ii) Not applicable.
(6) [ <del>5</del> ] An investigation of abuse or neglect by an entity (other than the Texas Department of Family and Protective Services Child Care Investigations division of an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency.	(A)(i) YES_  (A)(ii) As soon as possible, but no later_  	(B)(i) NO_  (B)(ii) Not applicable.

<p><u>(7)</u> [<del>(6)</del>] Any of the following relating to an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency alleging commission of any crime as provided in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?):</p> <ul style="list-style-type: none"> <li>• An arrest;</li> <li>• An indictment;</li> <li>• Information regarding an official complaint accepted by a county or district attorney; or</li> <li>• An arrest warrant executed by law enforcement.</li> </ul>	<p>(A)(i) YES_</p> <p>(A)(ii) As soon as you become aware of the situation.</p>	<p>(B)(i) NO_</p> <p>(B)(ii) Not applicable.</p>
<p><u>(8)</u> [<del>(7)</del>] A search warrant is executed by law enforcement at the operation or a foster home.</p>	<p>(A)(i) YES.</p> <p>(A)(ii) As soon as you become aware of the situation.</p>	<p>(B)(i) NO.</p> <p>(B)(ii) Not applicable.</p>
<p><u>(9)</u> [<del>(8)</del>] An allegation that an employee or caregiver:</p> <ul style="list-style-type: none"> <li>• Used a prohibited emergency behavior intervention technique, as outlined in §749.2051(b) of this chapter (relating to What types of emergency behavior intervention may I administer?);</li> <li>• Used a prohibited personal restraint technique, as outlined in §749.2205 of this chapter (relating to</li> </ul>	<p>(A)(i) YES_</p> <p>(A)(ii) As soon as possible but no later than 24 hours after you become aware of the incident.</p>	<p>(B)(i) YES_</p> <p>(B)(ii) As soon as possible but no later than 24 hours after you become aware of the incident.</p>

<p>What personal restraint techniques are prohibited?); or</p> <ul style="list-style-type: none"><li>• Used an Emergency Behavior Intervention inappropriately, as outlined in §749.2063 <u>of this chapter (relating to Are children in care required to participate in childhood activities?)</u> or §749.2281 of this chapter (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).</li></ul>		
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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

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety 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 on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Harris County, Texas, and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Lumina Global, Inc.*; Cause No. 2020-15976, in the 334th Judicial District, Harris County, Texas.

Nature of the Suit: Defendant Lumina Global, Inc. is a coffee roasting company owned and operated by Thomas Kuo and based out of Houston, Texas. Harris County initiated suit against Defendant alleging that during four investigations beginning in December 2016, Defendant was operating without a Texas Commission on Environmental Quality ("TCEQ") air permit. In another investigation in 2018, Defendant had obtained a TCEQ air permit but had not installed a thermal oxidizer as required by the permit. Harris County returned six more times and either Lumina was not using a thermal oxidizer or was operating it at the incorrect temperature for adequate destruction efficiency. The State of Texas, on behalf of the TCEQ, joined the suit as a necessary and indispensable party.

Proposed Settlement: The proposed Agreed Final Judgment includes injunctive relief that orders Defendant to immediately operate according to its amended air permit and to install a device that logs the operating temperature of the thermal oxidizer and maintain the device's logging records. The proposed settlement also assesses against Defendant civil penalties in the amount of \$55,000 to be equally divided between Harris County and the State; and attorney's fees in the amount of \$11,000 to Harris County and \$8,000 the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Tyler J. Ryska, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: [tyler.ryska@oag.texas.gov](mailto:tyler.ryska@oag.texas.gov). Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202202605  
Austin Kinghorn  
General Counsel  
Office of the Attorney General  
Filed: July 11, 2022

## Coastal Bend Workforce Development Board

Request for Proposal for General Contractor Services: Mission Plaza Phase II (RFP No. 22-03)

Workforce Solutions of the Coastal Bend (WFSCB) seeks a qualified and experienced General Contractor for the second phase of an office space buildout of 9,460 square feet located in the Mission Plaza shopping center at 4981 Ayers Road, Corpus Christi, Texas 78415.

**The RFP will be available on Monday, July 25, 2022 at 2:00 p.m. Central Time** and can be accessed on our website at: [www.workforcesolutionscb.org](http://www.workforcesolutionscb.org) or by contacting Esther Velazquez at (361) 885-3013 or [esther.velazquez@workforcesolutionscb.org](mailto:esther.velazquez@workforcesolutionscb.org).

Interested parties are encouraged to attend a pre-proposal meeting at WFSCB's Administrative Offices located at 400 Mann Street, Suite 800, Corpus Christi, Texas 78401, Main Conference Room on **Monday, August 1 at 10:00 a.m. Central Time**. The purpose of the meeting is to review the project requirements and answer any questions related to the RFP. While this meeting is not mandatory, attendance is strongly recommended. Parties unable to attend in person may participate virtually from a computer, tablet, or smart phone via Zoom:

**Join Zoom Meeting:** <https://us02web.zoom.us/j/85651084811?pwd=RXtPPWaMHi2tpCx2iZfrFRD20TlB9f.1> **US Toll-Free Call In:** (888) 475-4499

**Meeting ID:** 856 5108 4811

**Passcode:** 986734

**Proposals are due on Wednesday, August 17, 2022 at 4:00 p.m. Central Time.** Responses should be submitted via email to [esther.velazquez@workforcesolutionscb.org](mailto:esther.velazquez@workforcesolutionscb.org) or may be hand delivered or mailed to: Workforce Solutions of the Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions of the Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 1 (800) 735-2989 (TDD) and 1 (800) 735-2988 or 7-1-1 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

TRD-202202627

Esther Velazquez

Contract & Procurement Specialist

Coastal Bend Workforce Development Board

Filed: July 12, 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 07/18/22 - 07/24/22 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/18/22 - 07/24/22 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202202613

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 12, 2022



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 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 **August 22, 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: 2B Avery 7-11, LLC dba Avery 7-11; DOCKET NUMBER: 2022-0258-PST-E; IDENTIFIER: RN102956828; LOCATION: Avery, Red River County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(B) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank installed on or after January 1, 2009 in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: 3M Company; DOCKET NUMBER: 2022-0235-AIR-E; IDENTIFIER: RN100219005; LOCATION: Brownwood, Brown County; TYPE OF FACILITY: glass bead and plastic films and sheets manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 23344, Special Conditions Number 1, Federal Operating Permit Number O1651, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$41,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: BC Materials, LLC; DOCKET NUMBER: 2022-0465-WQ-E; IDENTIFIER: RN110119765; LOCATION: Buffalo, Leon County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Beth Puryear dba Emerald Estates, Carol Decker dba Emerald Estates, and Wayne Williams dba Emerald Estates; DOCKET NUMBER: 2021-1376-PWS-E; IDENTIFIER: RN102975778; LOCATION: Huntsville, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f), by failing to submit a recommendation to the executive director (ED) for optimal corrosion control treatment within six months after the end of the January 1, 2020 - June 30, 2020, monitoring period during which the lead and copper action levels were exceeded, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery to the ED; and 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2020 - June 30, 2020, monitoring period during which the lead and copper action levels were exceeded, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery to the ED; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Big Creek Construction LTD.; DOCKET NUMBER: 2022-0642-WR-E; IDENTIFIER: RN111466355; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, and 30 TAC §297.11, by failing to obtain authorization prior to diverting, storing, importing, using state water, or beginning construction of any work designed for the storage, taking, or diversion of water without first obtaining a water right; PENALTY: \$350; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: CHAPARRAL STEEL MIDLOTHIAN, LP; DOCKET NUMBER: 2021-0932-IHW-E; IDENTIFIER: RN100216472; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: steel mill manufacturing plant; RULES VIOLATED: 30 TAC §305.125(1) and Industrial Hazardous Waste Permit Number 50162, Provision Number IV.C., by failing to comply with all permit conditions; 30 TAC §335.9(a)(1)(G), by failing to maintain records of the location of all hazardous waste accumulation areas, situated at or near any point of generation; 30 TAC §335.9(a)(2), by failing to submit to the Executive Director a complete and correct Annual Waste Summary detailing the management of each hazardous and/or



Class 1 waste generated on-site during the reporting calendar year; 30 TAC §335.69(a)(1)(A) and §335.262(c)(2)(A) and 40 Code of Federal Regulations (CFR) §265.173(a), by failing to keep a container holding hazardous waste closed except when adding or removing waste, and failing to keep containers of paint and paint-related waste closed, except when adding or removing waste; and 30 TAC §335.69(a)(2) and (3), and (d)(2) and 40 CFR §262.34(a)(3), (c)(1)(ii), and (2), by failing to label all hazardous waste containers with accumulation start dates and with the words "Hazardous Waste"; PENALTY: \$25,885; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Log Cabin; DOCKET NUMBER: 2021-1417-MWD-E; IDENTIFIER: RN102800190; LOCATION: Log Cabin, Henderson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014158001, Monitoring Requirements Numbers 7.a and 7.b.i, by failing to report an unauthorized discharge to the TCEQ Regional Office within 24 hours of becoming aware of the noncompliance; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014158001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: \$10,375; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Morgan's Point; DOCKET NUMBER: 2020-0934-MWD-E; IDENTIFIER: RN102075801; LOCATION: Morgan's Point, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), §319.5(b), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010779001, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010779001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$33,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$33,000; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: City of Trinidad; DOCKET NUMBER: 2021-1543-PWS-E; IDENTIFIER: RN101386514; LOCATION: Trinidad, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(e)(2)(C), by failing to establish a restricted zone of 200 feet radius from the raw water intake works prohibiting all recreational activities and trespassing, designated with signs recounting these restrictions; 30 TAC §290.42(m) and §290.43(e), by failing to protect the facility's water treatment plant, potable water storage tanks, and all appurtenances with an intruder-resistant fence with a lockable gate; 30 TAC §290.44(d)(6), by failing to provide all dead-end mains with acceptable flush valves and discharge piping; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter (mg/L) of chloramine throughout the distribution system at all times; 30 TAC §290.46(e)(6)(A) and THSC, §341.033(a), by failing to use at least one operator who holds a Class B or higher surface water license who, if used part-time, is completely

familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class C or higher surface water license; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(6), by failing to maintain pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent levels of 0.05 mg/L for manganese and 15 color units for color; and 30 TAC §290.121(a) and (b), by failing to maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$6,300; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: COWBOY STAR INCORPORATED dba Beckley's Food Mart; DOCKET NUMBER: 2021-1502-PST-E; IDENTIFIER: RN102057411; LOCATION: Brady, McCulloch County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(g)(1)(A)(ii) and TWC, §26.3475(c)(2), by failing to test the spill prevention equipment and containment sumps used for interstitial monitoring of piping at least once every three years to ensure the equipment is liquid tight; 30 TAC §334.48(g)(1)(B) and TWC, §26.3475(c)(2), by failing to inspect the overflow prevention equipment at least once every three years; 30 TAC §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009; and 30 TAC §334.605(b) and (d), by failing to ensure that a certified Class C operator is retrained within three years of the last training date, and failing to retrain a certified Class A and Class B operator by January 1, 2020, with a course submitted to and approved by the TCEQ after April 1, 2018; PENALTY: \$8,400; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(11) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2021-1483-PWS-E; IDENTIFIERS: RN101275451 and RN101276806; LOCATION: Granbury, Hood County; TYPE OF FACILITIES: public water supplies; RULES VIOLATED: 30 TAC §290.42(m) and §290.43(e), by failing to provide an intruder-resistant fence around all potable water storage tanks and each water treatment plant and related appurtenances that remains locked during periods of darkness and when the facility is unattended, or a locked building in the fence line which may satisfy this requirement or serve as a gate; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; and 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or records drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned;

PENALTY: \$19,176; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2021-1530-PWS-E; IDENTIFIER: RN102678885; LOCATION: Fort Worth, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.46(m)(4), by failing to maintain all water treatments units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: \$2,327; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2021-0935-AIR-E; IDENTIFIER: RN102580834; LOCATION: Houston, Harris County; TYPE OF FACILITY: marine loading and natural gas transmission and distribution plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O3835, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §101.201(c) and §122.143(4), FOP Number O3835, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 97022, Special Conditions Number 1, FOP Number O3835, GTC and STC Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,521; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,008; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: FERACI CAZ LLC dba Petro Max Express; DOCKET NUMBER: 2022-0257-PST-E; IDENTIFIER: RN102866118; LOCATION: Mount Vernon, Franklin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$2,813; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Juan G. Jasso; DOCKET NUMBER: 2022-0193-WOC-E; IDENTIFIER: RN110910627; LOCATION: Snyder, Kent County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: \$2,888; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: L.F. Manufacturing, Incorporated; DOCKET NUMBER: 2021-1138-AIR-E; IDENTIFIER: RN102318565; LOCATION: Karnes City, Karnes County; TYPE OF FACILITY: fiberglass tank and pipe manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O2752, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Mahajan Shah, LLC dba Deep Food Mart; DOCKET NUMBER: 2022-0100-PST-E; IDENTIFIER: RN102653128; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,058; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Oscar Rohne; DOCKET NUMBER: 2021-1504-WOC-E; IDENTIFIER: RN111302741; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: \$2,439; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: PALADIN GATCO, LLC; DOCKET NUMBER: 2021-1493-WQ-E; IDENTIFIER: RN105240774; LOCATION: Paige, Bastrop County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG112601, Part III, Section A, Permit Requirements Numbers 1, 2 and 5; and Part IV, Standard Permit Conditions Number 7.f, Outfall Numbers 001Y, 002Y, 003Y, 004Y and TX1Y, TX2Y, TX3Y, and TX4Y, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: \$6,562; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(20) COMPANY: WestRock Texas, L.P.; DOCKET NUMBER: 2021-0342-AIR-E; IDENTIFIER: RN102157609; LOCATION: Evadale, Jasper County; TYPE OF FACILITY: pulp and paper mill; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 20365 and PSDTX785M7, Special Conditions Number 1, Federal Operating Permit Number O1265, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$12,226; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,890; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202202608

Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: July 12, 2022



### Enforcement Orders

An agreed order was adopted regarding KOIES, INC. dba A&M Food Mart, Docket No. 2019-0360-PST-E on July 12, 2022 assessing \$4,174 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALTO BUSINESS LLC dba Stop & Shop 4, Docket No. 2021-0266-PST-E on July 12, 2022 assessing \$2,517 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Lora Naismith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fatima Ladhani and Amirali Ladhani dba Rick's Drive Inn, Docket No. 2021-0513-PST-E on July 12, 2022 assessing \$6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AIN UNITED INC dba SO # 10, Docket No. 2021-0798-PST-E on July 12, 2022 assessing \$4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Heidi Fensterbush dba Country View Mobile Home Park and Michael D. Fensterbush dba Country View Mobile Home Park, Docket No. 2021-0826-PWS-E on July 12, 2022 assessing \$462 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202202673  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 13, 2022



### Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Minor Amendment and Notice of Pretreatment Program Substantial Modification

Notice Issued July 08, 2022

APPLICATION NO. WQ0010334004; The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010334004 issued to City of Abilene, P.O. Box 60, Abilene, Texas 79604, to authorize a substantial modification to the approved pretreatment program. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 22,000,000 gallons per day.

The facility is located at 19000 County Road 309 in Jones, County, Texas 79601. The treated effluent is discharged via Outfall 001 to Freewater Creek, thence to Deadman Creek, thence to Clear Fork Brazos River in Segment No. 1232 of the Brazos River Basin; via Outfall 002 to Kirby Lake, thence to Cedar Creek, thence to Fort Phantom Hill Reservoir in Segment No. 1236 of the Brazos River Basin; and via Outfall 003 directly to Fort Phantom Hill Reservoir in Segment No. 1236 of the Brazos River Basin. The unclassified receiving water uses are minimal use for Freewater Creek, intermediate aquatic life use for Deadman Creek, high aquatic life use for Kirby Lake, and limited aquatic life use for Cedar Creek. The designated uses for Segment No. 1236 are primary contact recreation, public water supply, and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-99.622777%2C32.540277&level=12>

The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication. Approval of the request for modification to the approved pretreatment program will allow the applicant to revise their technically based local limits and ordinance which incorporates such revisions to continue to regulate the discharge of pollutants by industrial users into its treatment works facilities. The following treatment work facilities will be subject to the requirements of the pretreatment program: TPDES Permit No. WQ0010334004.

The TCEQ Executive Director has completed the technical review of the pretreatment program substantial modification and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The pretreatment program substantial modification, fact sheet and executive director's preliminary decision, and draft permit are available for viewing and copying at the Grimes Water Treatment Plant (2nd Floor), 209 E. Hwy 80, Abilene, Texas 79601.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this draft permit or on the application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft permit or the application for the substantial modification of the pretreatment program. Generally, the TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the draft permit, or the application for substantial modification of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program.

All written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment) within 30 days of the date of publication of this notice.

After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application.

**MAILING LIST.** If you submit public comments, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk.

In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment), or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Abilene at the address stated above or by calling Mr. Larry Bailey, Industrial Waste Manager, City of Abilene, at (325) 676-6042.

TRD-202202570

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 8, 2022



### Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Renewal and Notice of Pretreatment Program Substantial Modification

Notice Issued July 08, 2022

**APPLICATION NO.** WQ0010232004; New Braunfels Utilities, 263 Main Plaza, New Braunfels, Texas 78130, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010232004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,900,000 gallons per day. The application also includes a substantial modification to the approved pretreatment program. TCEQ received this application on July 13, 2021.

The facility is located approximately 0.7 miles southwest of the intersection of Elley Lane and State Highway 46, in Guadalupe County, Texas 78130. The treated effluent is discharged via Outfall 001 to Lake Dunlap Hydroelectric Plant Canal, thence to Guadalupe River Below Comal River; and via Outfall 002 directly to Guadalupe River Below Comal River in Segment No. 1804 of the Guadalupe River Basin. The designated uses for Segment No. 1804 are primary contact recreation,

public water supply, aquifer protection, and high aquatic life use. The aquifer protection use designation does not apply to this facility as it is located outside the Edwards Aquifer zones. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.058333%2C29.653333&level=12>

The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication.

Approval of the request for modification to the approved pretreatment program will allow the applicant to incorporate the Streamlining Rule requirements (including optional provisions), revise their technically based local limits, legal authority, enforcement response plan, and standard operating procedures (including forms) which incorporate such revisions and to continue to regulate the discharge of pollutants by industrial users into its treatment works facilities, to perform inspections, surveillance, and monitoring, to determine compliance with applicable pretreatment standards and requirements, and to enforce against noncompliant industrial users. The following treatment work facilities will be subject to the requirements of the pretreatment program: TPDES Permit No. WQ0010232004, WQ0010232001, WQ0010232002, WQ0010232003.

The TCEQ Executive Director has completed the technical review of the application, pretreatment program substantial modification, and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, pretreatment program substantial modification, and draft permit are available for viewing online at <https://www.nbutexas.com/planning-for-the-future-of-new-braunfels/>.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this application or on the application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application or on the application for substantial modification of the pretreatment program. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application, or the application for substantial modification of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive

Director's decision. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment) within 30 days from the date of newspaper publication of this notice.

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment), or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application, the application for substantial modification of the pretreatment program, or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from New Braunfels Utilities at the address stated above or by calling Mr. Brent Lundmark at (830) 608-8900.

TRD-202202569

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 8, 2022



### Notice of District Petition

Notice issued July 6, 2022

TCEQ Internal Control No. D-05042022-005; Ranch Road Bollinger, LLC, a Texas limited liability company, Marshall G. Varner, and ARIA Investments, LLC, a Nevada limited liability company, (Petitioners) filed a petition for creation of Bollinger Municipal Utility District (District) of Caldwell County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 332.73 acres located within Caldwell County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to provide a water supply for municipal uses, domestic uses, and commercial purposes; (2) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to gather, conduct, divert and control local storm water or other local harmful excesses of water in the proposed District and the payment of organization expenses and operational expenses during construction and interest during construction; (4) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to provide such other facilities, sys-

tems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$45,000,000 (\$31,500,000 for water, wastewater, and drainage plus \$13,500,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202202549

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 6, 2022



#### Notice of District Petition

Notice issued July 6, 2022

TCEQ Internal Control No. D-05262022-040; Ann Burkhart Danz, trustee of the Charles W. Burkhart Sr. Trust, (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District No. 89 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are

no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 205.99 acres located within Brazoria County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of City of Alvin, Texas.

By Ordinance No. 21-X, passed and approved on December 16, 2021, the City of Alvin, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants and enterprises, and road facilities and park and recreational facilities as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$34,000,000 (\$20,000,000 for water, wastewater, and drainage plus \$11,000,000 for roads plus \$3,000,000 for recreation).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202202550

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 6, 2022



## Notice of District Petition

Notice issued July 6, 2022

TCEQ Internal Control No. D-06022022-004; Rockpoint 1375, LLC, a Texas limited liability company and Walker Project, LLC, a Texas limited liability company, (Petitioners) filed a petition for creation of New Waverly Municipal Utility District No. 1 (District) of Walker County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are two lienholders, the Petitioners, on the property to be included in the proposed District and the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 684.7 acres located within Walker County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of New Waverly, Texas. By Resolution No. 2021-05, passed and adopted on December 14, 2021, the City of New Waverly, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase interests in land and purchase, construct, acquire, improve, extend, maintain and operate improvements, facilities and equipment for the purpose of providing recreation facilities. Additionally, the proposed District may also exercise road powers and authority. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$54,480,000 (\$47,760,000 for water, wastewater, and drainage plus \$6,720,000 for roads).

### INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information

section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202202551

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 6, 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 **August 22, 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 com-

mission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 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: QAAF INC dba The King mart; DOCKET NUMBER: 2020-0437-PST-E; TCEQ ID NUMBER: RN102901766; LOCATION: 3430 East Interstate Highway 10, San Antonio, Bexar County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ Agreed Order Docket Number 2018-0675-PST-E, Ordering Provision Number 2.a., by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$18,000; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202202610

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 12, 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 **August 22, 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 August 22, 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: KEANE LANDSCAPING, INC.; DOCKET NUMBER: 2019-1129-MSW-E; TCEQ ID NUMBER: RN100796903; LO-

CATION: 2101 Parker Road, Wylie, Collin County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$46,878; STAFF ATTORNEY: John S. Mercurief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202202611

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 12, 2022



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 2022**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Blazing Bouncers LLC; DOCKET NUMBER: 2021-0718-PWS-E; TCEQ ID NUMBER: RN111257341; LOCATION: 11401 United States Highway 87 near Lubbock, Lubbock County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: Texas Health and Safety Code, §341.035(a) and 30 TAC §290.39(e)(1) and (h)(1), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new PWS; 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 public drinking water well into service;



PENALTY: \$1,000; STAFF ATTORNEY: Megan Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Diane Murray and John Murray; DOCKET NUMBER: 2020-0688-MLM-E; TCEQ ID NUMBER: RN110781978; LOCATION: 3420 Avenue D, Santa Fe, Galveston County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 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; and 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized collection, storage, processing, or disposal of MSW; PENALTY: \$2,638; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Maria F. Valles a.k.a. Maribel Valles; DOCKET NUMBER: 2019-0709-MSW-E; TCEQ ID NUMBER: RN106824428; LOCATION: off Private Road D64, Potet, Atascosa County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,312; STAFF ATTORNEY: John S. Mercurief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Sherry Kaufmann dba Caddo-Mesa Water Supply Corporation; DOCKET NUMBER: 2021-0732-PWS-E; TCEQ ID NUMBER: RN101442325; LOCATION: intersection of Jim Lane and Private Road 2283 near Quinlan, Hunt County; TYPE OF FACILITY: public water system (PWS); RULE VIOLATED: TCEQ Agreed Order Docket Number 2019-0207-PWS-E, Ordering Provision Number 2.a.iii., by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on August 26, 2015, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; PENALTY: \$900; STAFF ATTORNEY: Megan Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202202612

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 12, 2022



### Notice of Public Comment Period and Public Meeting on Proposed Revisions to the Texas Emissions Reduction Plan (TERP) Guidelines for Emissions Reduction Incentive Grants, RG-388 (ERIG Guidelines)

The Texas Commission on Environmental Quality (commission) is issuing this public notice of proposed revisions to the ERIG guidelines to obtain public input.

The proposed guideline revisions would incorporate changes made to the Diesel Emissions Reduction Incentives (DERI) in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Division 3. The rules were amended to implement portions of House Bill 4472, 87th Texas Legislature, 2021, Regular Session. The changes

provide that the commission set the minimum percentage of annual usage required for Texas Emission Reduction Plan-funded marine vessels or engines at 55% in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state.

### Public Meeting

The commission will hold a virtual hearing on the proposed revisions on Thursday, August 18, 2022, at 10:00 a.m.. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

### Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, August 16, 2022. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, August 17, 2022, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MjZjZTY5MWQ0OTY2My00ZjNlThmMGEtOTcxZDJlYzAxYzMw%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MjZjZTY5MWQ0OTY2My00ZjNlThmMGEtOTcxZDJlYzAxYzMw%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAY-TX (TDD). Requests should be made as far in advance as possible.

### Written Comments

Written comments submitted separate from the public meeting may be sent in writing to Mr. Nate Hickman, Texas Commission on Environmental Quality, Air Grants Division, Grant Development and Management Section, MC 204, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to Mr. Nate Hickman at (512) 239-0077. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2020-033-OTH-NR. The comment period closes **August 22, 2022**. Please choose one of the methods provided to submit your *written* comments.

Copies of the proposed guideline revisions can be obtained from the commission's website at [www.terpgrants.org](http://www.terpgrants.org). For further information about these documents or the public meetings, please call the TERP toll-free number at 800-919-8377.

TRD-202202665

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 13, 2022



Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0016056001

**APPLICATION.** Two Creeks Crossing Resort, LLC, P.O. Box 1345, Montgomery, Texas 77356, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016056001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day.

The facility will be located at 1581 Triple Creek Loop, in Polk County, Texas 77351. The treated effluent will be discharged directly to the Rocky Creek arm of Lake Livingston in Segment No. 0803 of the Trinity River Basin. The designated uses for Segment No. 0803 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the *TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards*, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Lake Livingston, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.077222%2C30.843055&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**PUBLIC COMMENT / PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Monday, August 22, 2022 at 7:00 p.m.**

**VFW Post 8568**

**4951 Hwy 190 W**

**Livingston, Texas 77351**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Onalaska Public Library, 372 Farm-to-Market Road 356, Suite 103, Onalaska, Texas. Further information may also be obtained from Two Creeks Crossing Resort, LLC at the address stated above or by calling Mr. Ryan Byrd, P.E., Project Manager; Ward, Getz & Associates, at (346) 209-4315.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: July 08, 2022

TRD-202202560

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 8, 2022



**Notice of Water Quality Application**

The following notices were issued May 31, 2022 thru July 08, 2022.

The following notices do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE NOTICE BEING PUBLISHED IN THE *TEXAS REGISTER*.

**INFORMATION SECTION**

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0010447001 to authorize change the disinfection method. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The facility is located approximately 1.5 miles south of the intersection of 8th Street and Main Street, in the City of Rusk in Cherokee County, Texas 75785.

Guadalupe-Blanco River Authority has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0014377001 to authorize the addition of an Interim phase. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 1431 Satterwhite Road, in Hays County, Texas 78610.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-202202670

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 13, 2022



## Notice of Water Rights Application

Notice Issued July 06, 2022

APPLICATION NO. 12-2814B; Larry Wayne Adams, P.O. Box 172, Gustine, Texas 76455, (Owner/Applicant) seeks to sever three reservoirs authorized by Certificate of Adjudication No. 12-3653, and combine them with Applicant's water rights authorized by Certificate of Adjudication No. 12-2814. Applicant also seeks authorization to use water authorized under Certificate of Adjudication No. 12-2814 to maintain the three reservoirs in Comanche County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on July 29, 2020. Additional information and fees were received on September 22 and 29, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 12, 2020. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to maintaining an alternate source of water for the reservoirs. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: [https://www.tceq.texas.gov/permitting/water\\_rights/wr-permitting/wr-apps-pub-notice](https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice). Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by July 25, 2022. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by July 25, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by July 25, 2022.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 2814

in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at <http://www.tceq.texas.gov/> Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202202552

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 6, 2022



## Texas Health and Human Services Commission

### Public Notice: Correction - Insulin Drug Copay Changes to CHIP State Plan

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 22-0001 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act.

The proposed amendment impacts CHIP members with incomes above 151% up to and including 201% of the federal poverty level by reducing their copay for brand name insulin drugs from \$35 to \$25. The proposed amendment implements the requirements of Senate Bill 827 of the 87th Legislative Session, 2021.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shae 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) 438-2264 or by email at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhsc.state.tx.us](mailto:Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us). Copies of the proposed amendment will be made available for review at HHSC local offices.

TRD-202202559

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 8, 2022



## Texas Higher Education Coordinating Board

### Meeting of Negotiated Rulemaking Committee on Apply Texas Common Admission Application

Date of Meeting: August 5, 2022

Start Time of Meeting: 09:30 a.m.

Location: Meeting will be held via video conference. A link to the video conference will be available at <https://www.highered.texas.gov/>

Additional Information Obtained From: Laurie Frederick, Convener, (512) 427-6446, [Laurie.Frederick@highered.texas.gov](mailto:Laurie.Frederick@highered.texas.gov)

Agenda:

1. Introductions
2. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
3. Brief Overview of Roles and Responsibilities
  - a) Role of Facilitator

- b) Role of Sponsor Agency
- c) Role of Committee Members
- 4. Consideration and Possible Action to Approve Facilitator
- 5. Procedural Issues
  - a) Consideration and Possible Action to Approve Ground Rules
  - b) Consideration and Possible Action to Approve Definition of Consensus
- 6. Discussion of Draft Rule Language on Apply Texas Common Admission Application
- 7. Consideration and Possible Action to Approve Proposed Rule Language on Apply Texas Common Admission Application

Individuals who may require auxiliary aids or services for this meeting should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

All persons requesting to address the Committee regarding an item on this agenda should do so in writing at least 24 hours before the start of the meeting at Laurie.Frederick@highered.texas.gov. A toll-free telephone number, free-of-charge video conference link, or other means will be provided by which to do so.

TRD-202202568  
 Nichole Bunker-Henderson  
 General Counsel  
 Texas Higher Education Coordinating Board  
 Filed: July 8, 2022



### Meeting of Negotiated Rulemaking Committee on Sexual Misconduct Substantial Compliance & Penalty Matrix

Date of Meeting: August 1, 2022

Start Time of Meeting: 09:30 a.m.

Location: Meeting will be held via video conference. A link to the video conference will be available at <https://www.highered.texas.gov/>

Additional Information Obtained From: Laurie Frederick, Convener, (512) 427-6446, Laurie.Frederick@highered.texas.gov

#### Agenda:

- 1. Introductions
- 2. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
- 3. Brief Overview of Roles and Responsibilities
  - a) Role of Facilitator
  - b) Role of Sponsor Agency
  - c) Role of Committee Members
- 4. Consideration and Possible Action to Approve Facilitator
- 5. Procedural Issues
  - a) Consideration and Possible Action to Approve Ground Rules
  - b) Consideration and Possible Action to Approve Definition of Consensus
- 6. Discussion of Draft Rule Language on Sexual Misconduct Substantial Compliance & Penalty Matrix

### 7. Consideration and Possible Action to Approve Proposed Rule Language on Sexual Misconduct Substantial Compliance & Penalty Matrix

Individuals who may require auxiliary aids or services for this meeting should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

All persons requesting to address the Committee regarding an item on this agenda should do so in writing at least 24 hours before the start of the meeting at Laurie.Frederick@highered.texas.gov. A toll-free telephone number, free-of-charge video conference link, or other means will be provided by which to do so.

TRD-202202567  
 Nichole Bunker-Henderson  
 General Counsel  
 Texas Higher Education Coordinating Board  
 Filed: July 8, 2022



## Texas Department of Housing and Community Affairs

### Notice to Public and to All Interested Mortgage Lenders

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low, and moderate income first-time homebuyers with the purchase of a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described herein may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that, if the certificate credit rate established under the Program exceeds 20%, the amount of such credit allowed in any taxable year may not exceed \$2,000. In order to qualify to receive a mortgage credit certificate, the homebuyer must qualify for a conventional, FHA, VA, USDA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The mortgage credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that mortgage credit certificates remain available under the Program. No mortgage credit certificates will be issued prior to ninety (90) days from the date of publication of this notice or after the date that all of the credit certificate amount has been allocated to homebuyers, and in no event will mortgage credit certificates be issued later than the date permitted by federal tax law.

In order to satisfy the eligibility requirements for a mortgage credit certificate under the Program: (a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided; (b) the prospective homebuyer's current income must not exceed, (1) for families of three or more persons, 115% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code")) of the area median income; and (2) for individuals and families of two persons, 100% (120% in certain targeted areas or in certain cases permitted un-

der applicable provisions of the Code) of the area median income; (c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code); (d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code) of the average area purchase price applicable to the residence; and (e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage (except in certain cases permitted under applicable provisions of the Code). To obtain additional information on the Program, including the boundaries of current targeted areas, as well as the current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy), please contact Lisa Johnson at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; telephone (512) 475-3993.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Lisa Johnson at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-3993. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of Section 25 of the Code and Treasury Regulation Sections 1.25-3T(j)(4) and 1.25-7T promulgated thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-202202663  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: July 13, 2022

## Texas Department of Insurance

### Company Licensing

Application to do business in the state of Texas for Ladder Life Insurance Company, a foreign life, accident, and/or health company. The home office is in Palo Alto, California.

Application for Allstate Life Insurance Company, a foreign life, accident and/or health company, to change its name to Everlake Life Insurance Company. The home offices is in Northbrook, Illinois.

Application for Allstate Assurance Company, a foreign life, accident and/or health company, to change its name to Everlake Assurance Company. The home offices is in Northbrook, Illinois.

Application for Amalgamated Casualty Insurance Company, a foreign fire and/or casualty company, to change its name to Forge Insurance Company. The home office is in Washington, D.C.

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 FRD-CL, Austin, Texas 78701.

TRD-202202557  
Justin Beam  
Chief Clerk  
Texas Department of Insurance  
Filed: July 7, 2022

### Company Licensing

Application for Columbian Mutual Life Insurance Company, a foreign life, accident and/or health company, to change its name to Columbian Life Insurance Company of New York, Inc. The home office is in East Binghamton, New York.

Application to do business in the state of Texas for Veterinary Pet Insurance Company, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC FRD-CL, Austin, Texas 78701.

TRD-202202671  
Justin Beam  
Chief Clerk  
Texas Department of Insurance  
Filed: July 13, 2022

## Texas Lottery Commission

### Scratch Ticket Game Number 2424 "CASH FRENZY"

#### 1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2424 is "CASH FRENZY". The play style is "key number match".

#### 1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2424 shall be \$1.00 per Scratch Ticket.

#### 1.2 Definitions in Scratch Ticket Game No. 2424.

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, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 and \$500.

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. 2424 - 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	TWFV
\$1.00	ONE\$
\$2.00	TWO\$

\$3.00	THR\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$500	FVHN

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 (2424), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2424-0000001-001.

H. Pack - A Pack of the "CASH FRENZY" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CASH FRENZY" Scratch Ticket Game No. 2424.

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 "CASH FRENZY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eleven (11) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins 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 eleven (11) 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 eleven (11) 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 eleven (11) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eleven (11) 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. A Ticket can win up to five (5) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless otherwise restricted by other parameters, play action or prize structure.

D. Each Ticket will have one (1) WINNING NUMBER Play Symbol.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than one (1) time.

G. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and \$10).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "CASH FRENZY" Scratch Ticket Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 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 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. As an alternative method of claiming a "CASH FRENZY" 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.

C. 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.

D. 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 "CASH FRENZY" 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 "CASH FRENZY" 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 840,000 Scratch Tickets in Scratch Ticket Game No. 2424. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2424 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	112,000	7.50
\$2.00	44,800	18.75
\$3.00	39,200	21.43
\$4.00	8,400	100.00
\$5.00	5,600	150.00
\$10.00	5,600	150.00
\$20.00	2,800	300.00
\$50.00	90	9,333.33
\$500	14	60,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.84. 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. 2424 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. 2424, 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-202202634  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 12, 2022

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**Texas Parks and Wildlife Department**

## Notice of Proposed Real Estate Transactions

### Acquisition of Land - El Paso County

#### Approximately 1100 Acres at Franklin Mountains State Park

In a meeting on August 25, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 1,100 acres at Franklin Mountains State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [trey.vick@tpwd.texas.gov](mailto:trey.vick@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

### Acquisition of Land - Mason County

#### Approximately 200 Acres at Mason Mountain Wildlife Management Area

In a meeting on August 25, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 200 acres at Mason Mountain Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Jason Estrella, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [jason.estrella@tpwd.texas.gov](mailto:jason.estrella@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

### Acceptance of Donation of Land - Bexar County

#### Approximately 6 Acres at Government Canyon State Natural Area

In a meeting on August 25, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acceptance of a donation of approximately 6 acres of land at Government Canyon State Natural Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [trey.vick@tpwd.texas.gov](mailto:trey.vick@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

### Grant of Utility Easement - Rusk County

#### Approximately 0.2 Acres at Martin Creek Lake State Park

In a meeting on August 25, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of a utility easement to Rusk County Electric Cooperative, Inc. of approximately 0.2 acres at Martin Creek Lake State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Jason Estrella, Land Conservation,

Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [Jason.estrella@tpwd.texas.gov](mailto:Jason.estrella@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

### Request for Drainage Easement - Aransas County

#### Approximately 0.2 acres at Goose Island State Park

In a meeting on August 25, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of a drainage easement to the community of Lamar of approximately 0.2 acres at Goose Island State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [ted.hollingsworth@tpwd.texas.gov](mailto:ted.hollingsworth@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

TRD-202202628

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: July 12, 2022

## Public Utility Commission of Texas

### Notice of Application to Amend a Certificate of Convenience and Necessity for a Minor Boundary Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 20, 2022, to amend a certificate of convenience and necessity for a minor service boundary change.

Docket Style and Number: Application of Peoples Telephone Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Minor Service Boundary Change in Wood County, Docket Number 53512.

The Application: Peoples Telephone Cooperative, Inc. filed an application for a minor boundary change to amend the boundary of the Golden exchange. Peoples seeks the revision to serve a small area contiguous to its currently certificated service area. The Golden Exchange borders Southwestern Bell Telephone Company dba AT&T Texas's Mineola Exchange.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by electronic mail at [puc.texas.gov](mailto:puc.texas.gov), by phone at (512) 936-7120, or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is August 29, 2022. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 53512.

TRD-202202607

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: July 12, 2022

## Texas Department of Transportation

### Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements of Transportation Code § 707.004(d) provide the required data to the department no later than October 28, 2022 in order for the department to meet the deadline for an annual report mandated by the Texas Legislature.

Pursuant to Section 7 of House Bill 1631, 86th Legislature, Regular Session, municipalities meeting certain criteria may continue to operate photographic traffic signal enforcement systems. Pursuant to Transportation Code § 707.004(d), each such municipality must continue to compile and submit to the department annual reports after installation showing the number and type of crashes that have occurred at the intersection.

Those municipalities that do not meet the criteria contained in Section 7 of House Bill 1631, 86th Legislature, Regular Session can no longer implement or operate photographic traffic enforcement systems with respect to highways or streets under their jurisdiction.

The department is required by Transportation Code § 707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically:

<https://www.txdot.gov/inside-txdot/division/traffic/safety/laws/red-light.html>

For additional information contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3204.

TRD-202202555

Angie Parker

Senior General Counsel

Texas Department of Transportation

Filed: July 6, 2022



## Texas Water Development Board

### Public Hearing Notice

Notice of Public Hearing on the Draft State Fiscal Year 2023 Clean and Drinking Water State Revolving Fund Intended Use Plans

The Texas Water Development Board (TWDB) will conduct a public hearing on the draft State Fiscal Year (SFY) 2023 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP) and the draft SFY 2023 Drinking Water State Revolving Fund (DWSRF) IUP. The hear-

ing will begin promptly at 10:00 a.m. on August 10, 2022, in Room 172 of the Stephen F. Austin Building at 1700 North Congress Avenue, Austin, Texas 78701.

The CWSRF IUP contains a list of wastewater and other projects in prioritized order which will be considered for funding in SFY 2023. The draft SFY 2023 CWSRF IUP has been prepared pursuant to rules adopted by the TWDB in 31 Texas Administrative Code Chapter 375.

The DWSRF IUP contains a list of drinking water projects in prioritized order which will be considered for funding in SFY 2023. The draft SFY 2023 DWSRF IUP has been prepared pursuant to the rules adopted by the TWDB in 31 Texas Administrative Code Chapter 371.

Interested persons are encouraged to attend the hearing and to present comments concerning the draft IUPs. Those who cannot attend the hearing may provide comments through the following two alternative methods:

(1) email comments to the electronic mail address: [iupcomments@twdb.texas.gov](mailto:iupcomments@twdb.texas.gov); or

(2) submit written comments to the postal mail address:

Mr. Mark Wyatt

Director, Program Administration and Reporting

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711

The deadline for comments will be specified in the draft CWSRF and DWSRF IUPs, which will be available at the TWDB's website at:

<http://www.twdb.texas.gov/financial/programs/CWSRF/index.asp> and <http://www.twdb.texas.gov/financial/programs/DWSRF/index.asp> respectively.

Please note that time limits on public comments may be imposed to allow all attendees to be heard. Additionally, the TWDB discourages comments requesting a revised rating based on project information not previously submitted.

Persons with disabilities who plan to attend this meeting and need auxiliary aids or services are requested to contact Patsy Cannon at (512) 463-0991 two (2) business days prior to the hearing so that appropriate arrangements can be made.

TRD-202202672

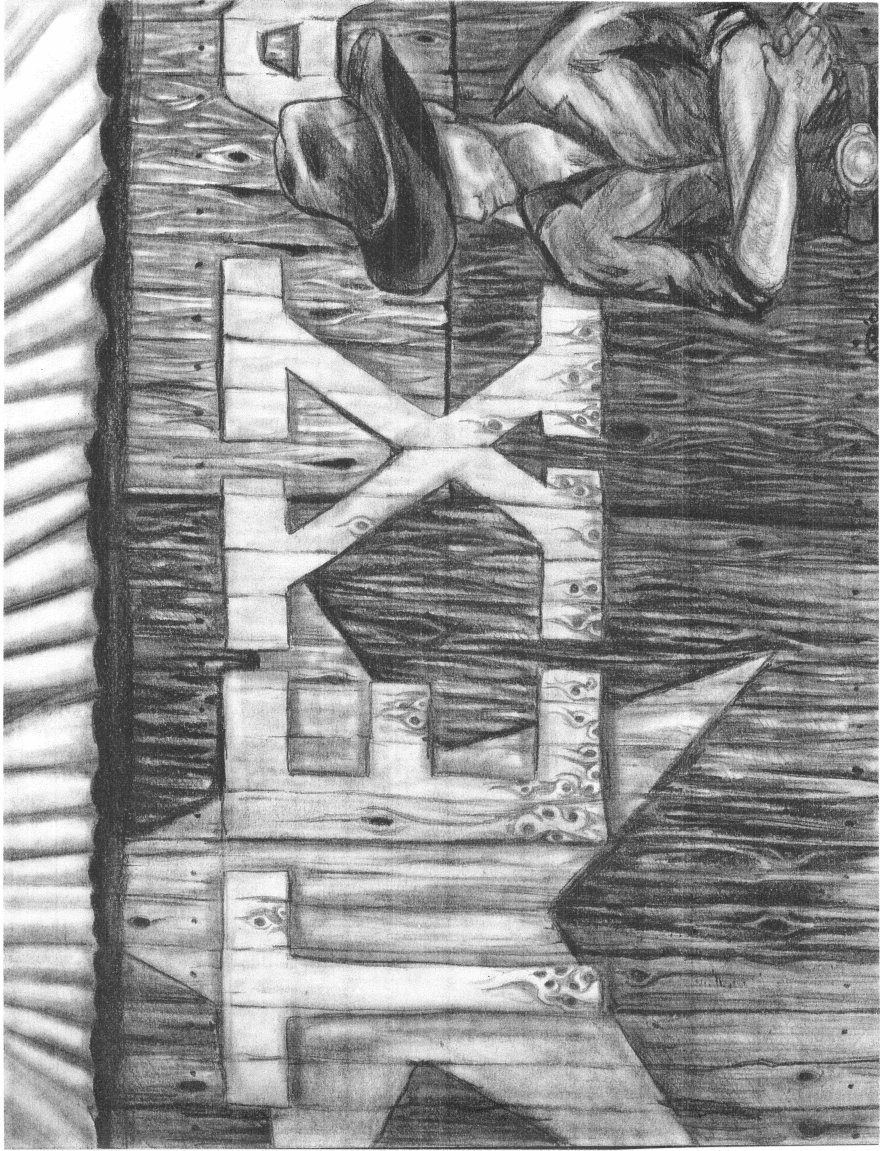
Ashley Harden

General Counsel

Texas Water Development Board

Filed: July 13, 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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