TEXAS REGISTER

Volume 47 Number 46 *November 18, 2022* *Pages 7607 - 7814*

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

https://www.sos.texas.gov
register@sos.texas.gov

Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $340.00 ($502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register,* 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

Secretary of State - John B. Scott

Director - Je T'aime Swindell

Editor-in-Chief - Jill S. Ledbetter

Editors
Leti Benavides
Jay Davidson
Brandy M. Hammack
Belinda Kirk
Laura Levack
Joy L. Morgan
Matthew Muir
Breanna Mutschler

IN THIS ISSUE

ATTORNEY GENERAL

Opinions....7613

EMERGENCY RULES

TEXAS PARKS AND WILDLIFE DEPARTMENT

WILDLIFE

31 TAC §65.82....7615

PROPOSED RULES

TEXAS DEPARTMENT OF AGRICULTURE

GENERAL PROCEDURES

4 TAC §§1.81 - 1.83, 1.91....7617

4 TAC §§1.1200 - 1.1204....7619

4 TAC §1.201....7619

[~~TEXAS~~] COMMODITY PRODUCERS BOARDS [~~LAW~~]

4 TAC §23.1....7623

4 TAC §§23.21 - 23.23, 23.25....7624

4 TAC §23.24, §23.26....7625

4 TAC §23.40, §23.44....7625

4 TAC §§23.41 - 23.43....7625

4 TAC §§23.100, 23.101, 23.103 - 23.107....7627

4 TAC §23.102....7629

4 TAC §23.200, §23.201....7629

4 TAC §23.220, §23.221....7629

4 TAC §§23.230 - 23.234....7630

4 TAC §§23.240 - 23.248....7630

4 TAC §§23.260 - 23.266....7630

4 TAC §23.280, §23.281....7630

FOOD AND NUTRITION DIVISION

4 TAC §26.21....7631

ECONOMIC DEVELOPMENT

4 TAC §§29.1 - 29.3....7631

TEXAS HISTORICAL COMMISSION

TEXAS HOLOCAUST, GENOCIDE, AND ANTISEMITISM ADVISORY COMMISSION

13 TAC §§18.1, 18.3, 18.5, 18.7....7632

TEXAS HOLOCAUST, GENOCIDE, AND ANTISEMITISM ADVISORY COMMISSION

COMMISSION PROCEDURES

13 TAC §§191.1, 191.3 - 191.9....7634

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CONTINUING EDUCATION

22 TAC §73.3....7635

22 TAC §73.3....7636

BUSINESS PRACTICES

22 TAC §75.6....7637

22 TAC §75.6....7638

22 TAC §75.11....7639

PATIENT RECORDS AND DOCUMENTATION

22 TAC §76.3....7640

22 TAC §76.3....7640

TEXAS OPTOMETRY BOARD

PRACTICE AND PROCEDURE

22 TAC §277.1....7641

22 TAC §277.2....7644

22 TAC §§277.3 - 277.6, 277.10 - 277.12....7646

HEALTH AND HUMAN SERVICES COMMISSION

LICENSING

26 TAC §745.475, §745.477....7651

WITHDRAWN RULES

TEXAS HISTORICAL COMMISSION

TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §§13.1 - 13.3, 13.6, 13.7....7655

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

SOCIAL WORKER LICENSURE

22 TAC §781.404....7655

TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

22 TAC §801.142....7655

TEXAS COMMISSION ON FIRE PROTECTION

CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.3, 403.5, 403.15....7655

ADVISORY COMMITTEES

37 TAC §463.1, §463.3....7656

37 TAC §§463.201, 463.203, 463.205, 463.207, 463.209, 463.211, 463.213....7656

37 TAC §§463.301, 463.303, 463.305, 463.307, 463.309, 463.311, 463.313....7656

37 TAC §§463.401, 463.403, 463.405, 463.407, 463.409, 463.411, 463.413 7656

ADOPTED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID HEALTH SERVICES

1 TAC §354.1341, §354.1342 7657

TEXAS DEPARTMENT OF AGRICULTURE

GENERAL PROCEDURES

4 TAC §§1.1000 - 1.1004 7659

4 TAC §1.1010, §1.1011 7659

4 TAC §1.1020, §1.1021 7659

4 TAC §1.1030, §1.1031 7660

4 TAC §1.1040, §1.1041 7660

4 TAC §§1.1050 - 1.1053 7660

FOOD AND NUTRITION DIVISION

4 TAC §§26.200 - 26.207 7660

RAILROAD COMMISSION OF TEXAS

OIL AND GAS DIVISION

16 TAC §3.65 7661

PUBLIC UTILITY COMMISSION OF TEXAS

SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

16 TAC §25.43 7669

TEXAS DEPARTMENT OF LICENSING AND REGULATION

ELECTRICIANS

16 TAC §73.100 7680

AIR CONDITIONING AND REFRIGERATION

16 TAC §75.100 7681

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.3 7682

22 TAC §72.5 7682

BUSINESS PRACTICES

22 TAC §75.10 7683

STATE BOARD OF DENTAL EXAMINERS

DENTAL LICENSURE

22 TAC §101.2 7683

22 TAC §101.3 7683

DENTAL HYGIENE LICENSURE

22 TAC §103.2 7684

22 TAC §103.3 7684

TEXAS STATE BOARD OF PLUMBING EXAMINERS

ADMINISTRATION

22 TAC §361.1, §361.13 7685

LICENSING AND REGISTRATION

22 TAC §§365.1, 365.5, 365.7, 365.8, 365.14, 365.15, 365.19 - 365.25 7685

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

SOCIAL WORKER LICENSURE

22 TAC §781.304 7686

22 TAC §781.401 7687

22 TAC §781.405 7688

22 TAC §781.406 7689

22 TAC §781.803 7690

22 TAC §781.805 7690

22 TAC §781.805 7691

TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

22 TAC §801.2 7692

22 TAC §801.43 7693

22 TAC §801.302 7693

22 TAC §801.305 7694

22 TAC §801.305 7695

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

FEES

22 TAC §885.1 7696

DEPARTMENT OF STATE HEALTH SERVICES

ABORTION FACILITY REPORTING AND LICENSING

25 TAC §§139.2, 139.4, 139.5 7698

25 TAC §139.32 7703

25 TAC §§139.50, 139.52, 139.53, 139.55 7703

RIGHTS AND PROTECTIONS OF PERSONS RECEIVING MENTAL HEALTH SERVICES

25 TAC §§414.751 - 414.765 7704

HEALTH AND HUMAN SERVICES COMMISSION

LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
26 TAC §553.3 7705
26 TAC §553.17 7709
26 TAC §553.103 7711
26 TAC §553.257, §553.259 7712
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
26 TAC §554.101 7713
26 TAC §554.204 7719
26 TAC §554.403 7720
26 TAC §554.1913 7722
26 TAC §554.1921, §554.1935 7722
26 TAC §554.2002 7723
26 TAC §554.2326 7724
LICENSING
26 TAC §§745.273, 745.275, 745.277 7726
26 TAC §745.435 7726
MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS
26 TAC §748.153 7727
26 TAC §748.303 7728
MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES
26 TAC §749.153 7729
26 TAC §749.503 7730
26 TAC §749.2551 7730
RESEARCH INVOLVING HEALTH AND HUMAN SERVICES COMMISSION SERVICES
26 TAC §§925.1 - 925.11 7731
TEXAS PARKS AND WILDLIFE DEPARTMENT
EXECUTIVE
31 TAC §51.168 7735
FINANCE
31 TAC §53.15 7737
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 7737
FISHERIES
31 TAC §57.111, §57.114 7743
31 TAC §57.127 7744
WILDLIFE
31 TAC §65.221 7744
31 TAC §65.901 7744
COMPTROLLER OF PUBLIC ACCOUNTS
CENTRAL ADMINISTRATION
34 TAC §1.200 7745
DEPARTMENT OF AGING AND DISABILITY SERVICES
RIGHTS AND PROTECTION OF INDIVIDUALS RECEIVING INTELLECTUAL DISABILITY SERVICES
40 TAC §§4.751 - 4.765 7746
TEXAS VETERANS LAND BOARD
GENERAL RULES OF THE VETERANS LAND BOARD
40 TAC §175.2 7746
TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS
DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSURE OF PERSONS WITH CRIMINAL CONVICTIONS
40 TAC §374.3 7747
TEXAS WORKFORCE COMMISSION
GENERAL ADMINISTRATION
40 TAC §§800.52, 800.71, 800.78, 800.80 7747
40 TAC §§800.550 - 800.557 7748
ADULT EDUCATION AND LITERACY
40 TAC §805.2, §805.4 7750
40 TAC §805.21 7752
40 TAC §805.41, §801.43 7752
RULE REVIEW
Adopted Rule Reviews
Texas Department of Agriculture 7753
Credit Union Department 7754
Texas Optometry Board 7754
TABLES AND GRAPHICS
..... 7757
IN ADDITION
Office of Consumer Credit Commissioner
Notice of Rate Ceilings 7769

Texas Commission on Environmental Quality

Agreed Orders....7769

Correction of Error....7770

Extension of Nomination Period for Appointment to Serve on the Irrigator Advisory Council....7770

Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 170677....7770

Notice of Correction to Agreed Order Number 1....7771

Notice of Correction to Agreed Order Number 6....7771

Notice of District Petition....7771

Notice of District Petition....7772

Notice of District Petition....7773

Notice of District Petition....7773

Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions....7774

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Carol Mahan, Tanner Mahan, Holly P. Wright, and Tyler O. Wright SOAH Docket No. 582-23-04120 TCEQ Docket No. 2021-0287-WR-E....7775

Notice of Public Hearing on Assessment of Administrative Penalities and Requiring Certain Actions of S.M. Patel, Inc. DBA Diboll Food Mart SOAH Docket No. 582-23-04121 TCEQ Docket No. 2021-0563-PST-E....7775

Notice of Request for Public Comment and Notice of a Public Meeting on Draft Implementation Plan for Two Total Maximum Daily Loads for Indicator Bacteria in the Sandy Creek and Wolf Creek Watershed 7776

Notice of Request for Public Comment and Notice of Public Meetings for I-Plan for Two TMDLs for Indicator Bacteria in the Caney Creek Watershed....7777

Notice of Water Rights Application....7777

Texas Facilities Commission

Request for Proposals #303-3-20746....7778

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Federal Fiscal Year (FFY) 2023 Payment Rates for Medicaid Community Hospice for Routine Home Care, Continuous Home Care, Inpatient Respite Care, General Inpatient Care Services, and the Service Intensity Add-on Effective Retroactive to October 1, 2022....7778

Texas Department of Insurance

Company Licensing....7778

Texas Lottery Commission

Scratch Ticket Game Number 2461 "20X CASH BLITZ"....7779

Scratch Ticket Game Number 2462 "30X CASH BLITZ CROSSWORD"....7784

Scratch Ticket Game Number 2463 "50X CASH BLITZ"....7790

Scratch Ticket Game Number 2464 "100X CASH BLITZ"....7797

Scratch Ticket Game Number 2465 "200X CASH BLITZ"....7804

Public Utility Commission of Texas

Notice of Application for Recovery of Universal Service Funding 7812

Notice of Application for True-Up of 2019 Federal Universal Service Fund Impacts to the Texas Universal Service Fund....7813

THE ATTORNEY GENERAL

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

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

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

Opinions

KP-0421

The Honorable John K. Greenwood

Lampasas County Attorney

409 South Pecan, Suite 203

Lampasas, Texas 76550

Re: Qualifications for a retired judge's appointment as a visiting judge to a constitutional county court under section 26.023 of the Government Code (RQ-0456-KP)

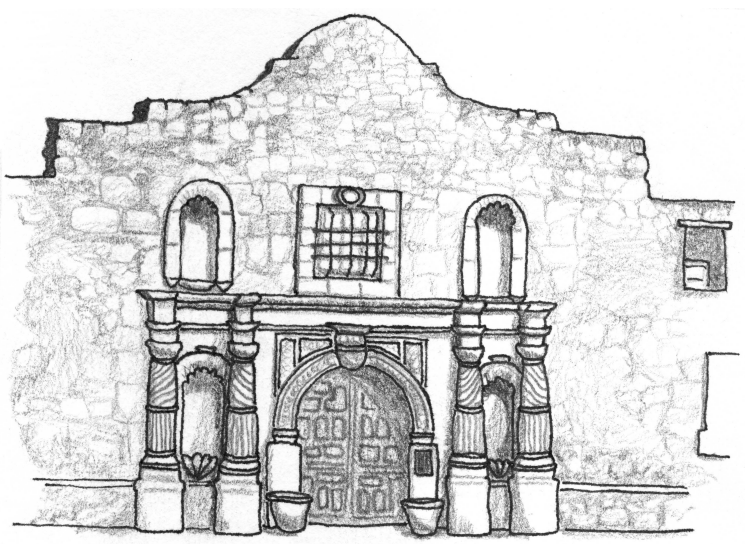
S U M M A R Y

A court would likely define the term "retired judge" for purposes of Government Code subsection 26.023(a) by reference to its definition in Government Code subsection 74.041(6). Under that construction, a former constitutional county judge who does not otherwise satisfy subsection 74.041(6) is not eligible to be appointed as a visiting judge under Government Code subsection 26.023(a).

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

TRD-202204512
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: November 9, 2022

♦ ♦ ♦



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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.82

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, an amendment to §65.82, concerning Disease Detection and Response. The rules are contained in Division 1 of Subchapter B. The emergency adoption will create new Surveillance Zone 9 (SZ 9) in Gillespie County and new SZ 10 in Limestone County in response to the recent detection of chronic wasting disease (CWD) in deer breeding facilities located in those counties.

The department's executive director has determined that given the nature of CWD and its recent detection in two deer breeding facilities there is an immediate danger to white-tailed deer, which is a species authorized to be regulated by the department, and that the adoption of the amendment on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

The emergency rules will initially be in effect for no longer than 120 days but may be extended for an additional 60 days. It is the intent of the department to also publish proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process if there is a continuing need for the zones.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Although CWD remains under study, it is known to be invariably fatal to certain species of cervids, and it is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). (There is no scientific evidence to indicate that CWD is transmissible to humans.) Moreover, a high prevalence of the disease in wild populations correlates with deer population declines and there is evidence that hunters tend to avoid areas of high CWD prevalence. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could potentially be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules established a system of concentric zones within which the movement of live deer under department permits (Deer Breeder Permits, Triple T Permits, and Deer Management Permits) is restricted, and required deer harvested in specific geographical areas to be presented at check stations to be tested for CWD. The rules have been modified several times since then in response to repeated detections of CWD in deer breeding facilities in various parts of the state.

On August 30, 2022, the department received confirmation that a yearling white-tailed buck deer in a deer breeding facility located in Gillespie County had tested positive for CWD. Additional testing at that facility resulted in another positive test confirming CWD in a male yearling white-tailed deer on September 20, 2022.

On September 12-13 and October 12, 2022, the department received confirmation that five female white-tailed deer of approximately three years of age in a deer breeding facility located in Limestone County had tested positive for CWD.

Based on the epidemiological science of CWD and in consultation with TAHC, the department has determined that prompt action to contain CWD in this area is necessary and that it is prudent to create additional SZs by emergency rule with fewer than 30 days' notice. This action will restrict movement of deer and deer carcasses within the designated zones.

Except as otherwise may be provided by rule, no person within a SZ may conduct, authorize, or cause any activity involving the movement of a susceptible species into, out of, or within a SZ under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity includes, but is not limited to, the transportation, introduction, or removal of, the authorization of the transportation, introduction, or

removal of, or the causing of the transportation, introduction, or removal of a live susceptible species into, out of, or within a SZ. In addition, pursuant to existing §65.88, regarding Deer Carcass Movement Restrictions, there are restrictions on the movement of the carcass of a susceptible species, including white-tailed deer, from a property located within a SZ. Hunters that harvest a white-tailed deer or other CWD susceptible species within the SZ are required to bring their harvested animal to a TPWD check station within 48 hours of harvest.

The department will undertake an effort to inform the public with respect to the emergency rules and any permanent rules to follow.

The emergency action is necessary to protect the state's captive and free-ranging white-tailed deer populations.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs.

(1) Surveillance Zones.

(A) - (H) (No change.)

(I) Surveillance Zone 9.

(i) That portion of the state lying within a line beginning at the intersection of Kramer Road and F.M. 783 in Gillespie County; thence east along F.M. 783 to Jung Road; thence east along Jung Road to Old Harper Road; thence east along Old Harper Road to Maner Road; thence north along Maner Road to Cut Off Road; thence northeast along Cut Off Road to Doss Spring Creek Road; thence south along Doss Spring Creek Road to Old Harper Road; thence east along Old Harper Road to Reeh Road; thence north along Reeh Road to Crenwelge Road; thence north along Crenwelge Road to Squaw Creek Road; thence northeast along Squaw Creek Road to F.M. 648; thence west along F.M. 648 to Lange's Mill Road; thence north along Lange's Mill Road to Jack Rabbit Road; thence north along Jack Rabbit Road to Threadgill Creek Road; thence west along Threadgill Creek Road to Geistweidt Road; thence west along Geistweidt Road to Onion Creek Road; thence northwest along Onion Creek Road to Salt Branch Loop Road; thence west along Salt Branch Loop Road to East Mill Creek Road; thence west along East Mill Creek Road to the intersection of James River Road and East Mill Creek road and Gypsum Mine Road; thence south along Gypsum Mine Road to C.R. 433; thence southwest along C.R. 433 to F.M. 385; thence south along F.M. 385 to the intersection of Falls Prong Creek; thence east along Falls Prong Creek to Wendel Road; thence south along Wendel Road to Josephine Road; thence east along Josephine Road to Gina Road; thence northeast along Gina Road to Kramer Road; thence south along Kramer Road to F.M. 783.

(ii) For the purposes of this subchapter, the zone described in clause (i) of this subparagraph also includes the following:

(I) The city limits of Harper; and

(II) the roadway and right-of-way of:

(-a-) F.M. 385 from the intersection of F.M. 385 and C.R. 430 in Kimble County to U.S. 290;

(-b-) U.S. 290 from the intersection of F.M. 385 and to U.S. 290 to the intersection Reeh Road and U.S. 290 in Gillespie County;

(-c-) Wendel Road from the intersection of U.S. 290 and Wendel Road to the intersection of Wendel Road and Josephine Road in Gillespie County;

(-d-) F.M. 783 from the intersection of F.M. 783 and U.S. 290 to the intersection of F.M. 783 and Jung Road;

(-e-) Old Harper Road from the intersection of Old Harper Road and U.S. 290 to the intersection of Old Harper Road and Jung Road;

(-f-) Reeh from the intersection of Reeh Road and U.S. 290 to the intersection of Reeh Road and Old Harper Road;

(-g-) Doss Spring Creek Road from the intersection of Doss Spring Creek Road and U.S. 290 to the intersection of Doss Spring Creek Road and Old Harper Road;

(-h-) Cornehl from the intersection of Cornehl Road and U.S. 290 to the intersection of Cornehl and Old Harper Road; and

(-i-) East Mill Creek Road, from the intersection of East Mill Creek Road and James River Road in Mason County to C.R. 4301 in Kimble County; and from C.R. 4301 to C.R. 430, along C.R. 430 to F.M. 385.

(J) Surveillance Zone 10. That portion of the state lying within a line beginning at the intersection of U.S. 84 and C.R. 146 in Limestone County; thence north along C.R. 146 to the intersection of C.R. 145; thence north along C.R. 145 to F.M. 73; thence northeast along F.M. 73 to F.M. 341; thence north along F.M. 341 to the intersection of C.R. 150; thence northeast along C.R. 150 to C.R. 173; thence north along C.R. 173 to C.R. 170; thence north along C.R. 170 to C.R. 158; thence east along C.R. 158 to C.R. 156, thence north along C.R. 156 to F.M. 936; thence north along F.M. 936 to S.H. 31; thence northeast along F.M. 31 to F.M. 709 in Navarro County; thence south along F.M. 709 to F.M. 638; thence southeast along F.M. 638 to S.H. 442 (S. Second St. W); thence east along S.H. 442 to Westminster St.; thence south along Westminster St. (C.R. 234) to S.H. 171; thence south along S.H. 171 to F.M. 2838; thence southwest along F.M 2838 to U.S. 84; thence west along U.S. 84 to C.R. 146.

(K) [~~(I)~~] Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204407
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 4, 2022
Expiration date: March 3, 2023
For further information, please call: (512) 389-4775

♦ ♦ ♦

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER D. MISCELLANEOUS PROVISIONS

4 TAC §§1.81 - 1.83, 1.91

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter D, §§1.81 and 1.91, and proposes new §§1.82 and 1.83. The Department identified the need for the proposed amendments and new rules during its rule review, conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §1.81 remove unnecessary language, make editorial changes, make changes for improved readability and clarity, and add cross references to statute.

Proposed new §1.82 addresses the operation of the department's sick leave pool as required by Texas Government Code, § 661.002.

Proposed new §1.83 addresses the operation of the department's family leave pool as required by Texas Government Code, § 661.022.

The proposed amendments to §1.91 add a cross reference to statute, make editorial changes, and update the rule in accordance with current department organization and procedure.

Ms. Laura Ingram, Deputy General Counsel / Ethics Officer, has determined that for the first five-year period the proposed amendments and new rules are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

Ms. Ingram has also determined that for each year of the first five years the proposed amendments and new rules are in effect, the public benefit will be improved statutory compliance and readability and clarity of the rules.

Ms. Ingram has determined there are no anticipated economic costs to persons required to comply with the proposed amendments and new rules.

Ms. Ingram has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed amendments and new rules are in effect:

(1) no government programs will be created or eliminated;

(2) no employee positions will be created or eliminated;

(3) there will be no increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) no new regulations will be created by the proposal;

(6) there will be no expansion, limitation, or repeal of existing regulation;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the Texas economy.

The Department has determined the proposed rules will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted to Ms. Laura Ingram, Deputy General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: Laura.Ingram@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments and new rules are proposed pursuant to Section 2255.001 of the Texas Government Code (Code), which requires the Department to adopt rules governing the relationship between private donors or organizations and the Department and its employees; Section 2171.1045 of the Code, which requires the Department to adopt rules relating to assignment and use of agency vehicles; Section 661.002 of the Code, which requires the Department to adopt rules relating to the operation of the Department's sick leave pool; and Section 661.022 of the Code, which requires the Department to adopt rules relating to the operation of the Department's family leave pool.

§1.81. Private Organizations or Donors.

(a) Purpose. The purpose of this section is to establish standards of conduct to govern the relationships between the department, its officers and employees, [~~of the department~~] and private organizations or donors in accordance with Texas Government Code, §2255.001.

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

(1) Donor--An individual or organization that gives or offers to give nonpublic gifts or donations, in whatever form, to the department. [~~Department--The Texas Department of Agriculture.~~]

[(2) Officer--The commissioner and deputy commissioner of agriculture.]

[(3) Employee--Any person, other than an officer, employed by the department.]

(2) [(4)] Private organization--A private organization designed or operated to further the purposes and duties of the department.

[(5) Donor--An individual or organization that gives or offers to give nonpublic gifts or donations, in whatever form, to the department.]

(c) Administration of donations.

(1) Any funds received by the department as donations will be deposited in the state treasury.

(2) Any funds received by a private organization as donations for the benefit of the department shall be administered by the private organization in a manner that best serves the interests of the department. Any income from the investment of such funds shall also accrue to the benefit of the department.

(3) All donations, in whatever form, will be used for the purpose specified by the donor, or for general departmental programs if no purpose is specified.

(d) Standards of conduct. Acceptance of donations by the department, its officers, and employees may not result in an officer or employee's monetary enrichment. Acceptance must comply with department policy and procedures, and statutory requirements, including Texas Government Code, Chapter 572, Subchapter C; Texas Government Code, Chapter 575; and Texas Government Code, §659.0201.

[(1) An officer or employee shall not accept or solicit any gift, favor, or service from a private organization or donor that might reasonably tend to influence him in his official duties or that he knows or should know is being offered him with the intent to influence his official conduct.]

[(2) An officer or employee shall not accept other employment or engage in any business or professional activity with a private organization or donor which the officer or employee might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official position.]

[(3) An officer or employee shall not accept other employment or compensation from a private organization or donor which could reasonably be expected to impair the officer or employee's independence of judgment in the performance of his official position.]

[(4) An officer or employee shall not make personal investments in association with a private organization or donor which could reasonably be expected to create a substantial conflict between the officer or employee's private interest and the interest of the department.]

[(5) An officer or employee shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his official powers on behalf of a private organization or donor or for having performed his official duties in favor of a private organization or donor.]

(e) [(6)] Service by officers and employees. An officer or employee of [who has policy direction over] the department [and] who also serves as an officer or director of a private organization or donor shall not vote on or otherwise participate in any measure, proposal, or decision pending before the private organization or donor if the department might reasonably be expected to have an interest in such measure, proposal, or decision.

(f) [(7)] Use of employees or property. The department, its officers, and employees [An officer or employee] shall not authorize a private organization or donor to use the employees or property of the department unless the use is [property is used] in accordance with a contract between the department and the private organization or donor, or the department is otherwise compensated for the use [of the property].

§1.82. Sick Leave Pool.

(a) A sick leave pool is established to alleviate hardship caused to an employee and the employee's immediate family if a catastrophic injury or illness forces the employee to exhaust all eligible leave time earned by that employee and to lose compensation time from the state.

(b) The Administrator for Human Resources, or his or her designee, will administer the sick leave pool.

(c) The pool administrator will develop and maintain a policy, operating procedures, and forms for the administration of the sick leave pool, subject to approval by the Deputy Commissioner.

(d) Operation of the pool shall be consistent with the Texas Government Code, Chapter 661, Subchapter A.

§1.83. Family Leave Pool.

(a) A family leave pool is established to provide eligible employees more flexibility in:

(1) bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and

(2) caring for a seriously ill family member or the employee themselves, including pandemic-related illnesses or complications caused by a pandemic.

(b) The Administrator for Human Resources, or his or her designee, will administer the family leave pool.

(c) The pool administrator will develop and maintain a policy, operating procedures, and forms for the administration of the family leave pool, subject to approval by the Deputy Commissioner.

(d) Operation of the pool shall be consistent with the Texas Government Code, Chapter 661, Subchapter A-1.

§1.91. Vehicle Fleet Management.

Pursuant to Texas Government Code, §2171.1045, and consistent with the management plan developed by the office of vehicle fleet management, the department requires that:

(1) [(a)] Each [Except as provided by subsection (b) of this section,] state-owned vehicle [vehicles] under the department's control shall be assigned to the department's motor vehicle pool and made available for checkout [use] as needed, except for a vehicle assigned to a field employee for regular use.

(2) [(b)] If the department assigns a vehicle [a state-owned vehicle under the department's control is assigned] to an administrative or executive [individual] employee for use on a regular basis, then [the head of] the department's Chief of Operational Support [Services Department], or his or her designee, must document in writing a finding that the assignment and use of the vehicle is critical to the needs and mission of the department [department's needs and mission]. The written documentation must be maintained by the Agency Administration Division [Support Services Department].

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

Filed with the Office of the Secretary of State on November 2, 2022.

TRD-202204333
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

SUBCHAPTER R. CHILDREN'S ACCESS TO NUTRITIOUS FOOD GRANT PROGRAM

4 TAC §§1.1200 - 1.1204

The Texas Department of Agriculture (Department) proposes the repeal of Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter R, Children's Access to Nutritious Food Grant Program, §§1.1200 - 1.1204. The Department identified the need for the proposed repeal during its rule review of Subchapter R conducted pursuant to Texas Government Code §2001.039, the adoption of which can in found in the Review of Agency Rules section of this issue.

The repeal of Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter R, is proposed based on lack of business necessity due to the absence of appropriated funding. During its review of Subchapter R, the Department determined that funds were not appropriated for the program. At such time as program funding is appropriated, the Department will comply with the requirements contained within Texas Agriculture Code Chapter 25 and re-establish the grant program.

The Department has determined that the proposed repeals will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

Karen Reichek, Administrator for Trade and Business Development, has determined that for the first five years the proposal is in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the proposed repeals.

Ms. Reichek has also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated will be improved clarity to Department rules by removing rules for a program that is not currently funded or administered by the Department. There will be no adverse economic effect on micro-businesses, small businesses, rural communities, or individuals as a result of the proposed repeals. .

Pursuant to Texas Government Code, §2001.0221 the Department provides the following Government Growth Impact Statement for the proposed repeals For each year of the first five years after implementing the proposed repeals, the Department has determined the following:

1. No new or current government or Department programs will be created. While the rules for a program would be repealed as a result of this proposal, the program itself would not entirely be eliminated. The Children's Access to Nutritious Food Grant Program remains authorized by Texas Agriculture Code, Chapter 25, subject to appropriation of funding;

2. No employee positions will be created or eliminated;

3. There will not be an increase or decrease in future legislative appropriations to the Department; however, the Children's Access to Nutritious Food Grant Program remains authorized by Texas Agriculture Code, Chapter 25, subject to appropriation of funding;

4. There will be no increase or decrease in fees paid to the Department;

5. There will be no new regulations created by the proposal;

6. The proposed repeals will repeal an existing regulation;

7. The Children's Access to Nutritious Food Grant Program did not receive appropriated funds and was not implemented by the Department; therefore, the proposed repeal neither increases nor decreases the number of individuals subject to the rules' applicability;

8. The proposed repeals are not anticipated to have an adverse effect on the Texas economy.

Written comments on the proposed repeals may be submitted to Ms. Karen Reichek, Administrator for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: Karen.Reichek@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication in the *Texas Register.*

The repeals are proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposed repeals is Texas Agriculture Code, Chapters 12 and 25.

§1.1200. Statement of Purpose.

§1.1201. Definitions.

§1.1202. Eligibility.

§1.1203. Contents of Proposal.

§1.1204. Reporting Requirements.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204400
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.201

The Texas Department of Agriculture (Department) proposes new 4 Texas Administrative Code §1.201, concerning Wine Advisory Committee.

Proposed §1.201 establishes the Wine Advisory Committee (Committee), describes the Committee's purposes, composition, and terms or office for members. In addition, it prescribes meeting requirements and procedures. The proposed rule also creates requirements for member conduct and training, prevents conflicts of interests, and provides for the duration of the Committee.

The Committee is needed to provide advice to the Department to fulfill its responsibilities under Chapter 50B, Agriculture Code and Chapter 110, Alcoholic Beverage Code, which require the Department to promote the Texas wine industry.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed rule will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the Department has determined the following:

1. the proposed rule does not create or eliminate a government program;

2. implementation of the proposed rule does not require the creation or elimination of employee positions;

3. implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Department;

4. the proposed rule does not require an increase or decrease in fees paid to the Department;

5. the proposed rule does create a new regulation;

6. the proposed rule will not repeal an existing regulation;

7. the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

8. the proposed rule does not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Karen Reichek, Administrator for Trade and Business Development, has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Reichek has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be creation of an advisory committee that will assist the Department in discharging its duties under Chapter 50B, Agriculture Code and Chapter 110, Alcoholic Beverage Code. Ms. Reichek has also determined that for each year of the first five-year period the proposed rule is in effect, there will be no cost to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule; therefore, preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Comments on the proposed rule may be submitted to Karen Reichek, Administrator for Trade and Business Development, P.O. Box 12847, Austin, Texas 78711, or by email to Karen.Reichek@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rule is proposed under Section 12.0204 of the Texas Agriculture Code, which provides the Department by rule may establish advisory committees to make recommendations to the Department on programs, rules, and policies administered by the Department and Section 110.002 of the Texas Alcoholic Beverage Code, which authorizes the Department to adopt rules as necessary to implement the Texas Wine Marketing Assistance Program.

Texas Agriculture Code, Chapter 50B and Texas Alcoholic Beverage Code, Chapter 110 are affected by the proposed rule.

§1.201. Wine Advisory Committee

(a) The Committee. The Wine Advisory Committee (Committee) is established pursuant to Texas Agriculture Code §12.0204. The Committee serves in an advisory capacity and is subject to Texas Government Code, Chapter 2110.

(b) Purpose.

(1) The Committee shall assist the Commissioner by developing recommendations concerning a long-term vision and marketable identity for the wine industry in the state and assist the Commissioner in establishing and implementing the Texas Wine Marketing Assistance Program under Texas Alcoholic Beverage Code, Chapter 110.

(2) The Committee may make recommendations related to wine marketing, research, or educational outreach activities for the department.

(3) At the request of the Commissioner, the Committee may also offer recommendations associated with department rules and internal policies to accomplish the goals and objectives of the Texas Wine Marketing Assistance Program.

(c) Composition. The Committee shall be composed of eleven members appointed by the Commissioner from the following groups:

(1) three grape growers representing various regions of the state;

(2) three wineries representing various sizes and regions of the state;

(3) two researchers or educators specializing in viticulture or enology;

(4) two consumer representatives; and

(5) one employee of the Texas Alcoholic Beverage Commission.

(d) Terms of Service for Committee Membership.

(1) Each Committee member serves a four-year term, except for members initially appointed to two-year terms as provided by paragraph (2) of this subsection.

(2) Members shall be appointed to staggered terms so that the terms of service for approximately half of the members will expire each odd year. Of the Committee members initially appointed, five will be appointed for an initial term of two years and six will be appointed for an initial term of four years.

(3) Members shall continue to serve after expiration of their term of service until a replacement is appointed.

(4) The Commissioner may reappoint a member to the Committee.

(5) Any vacancy occurring in an appointed position on the Committee shall be filled by the Commissioner for the unexpired term.

(6) Appointments to the Committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(e) Officers.

(1) The Committee shall elect a presiding officer and an assistant presiding officer at its first meeting.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, and cause proper reports to be made to the Commissioner as applicable.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) The Committee may reference its officers by other terms such as chairperson and vice-chairperson.

(f) Meetings.

(1) The Committee shall meet only as necessary to conduct Committee business, but no less frequently than once each calendar year, to provide guidance to the Commissioner in establishing and implementing the program.

(2) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the Committee.

(3) Meeting arrangements shall be made by department staff. Department staff shall contact Committee members to determine availability for a meeting date and place.

(4) The Committee is not a "governmental body" as defined in the Open Meetings Act, Texas Government Code, Chapter 551. Meetings of the Committee may be announced in advance on the department's website for a reasonable time when public participation is solicited by the Committee.

(5) Each member of the Committee shall be informed of a committee meeting at least five business days before the meeting.

(6) A simple majority of the members of the Committee shall constitute a quorum for the purpose of transacting business.

(7) The Committee may only meet with a quorum present.

(g) Attendance.

(1) Members shall attend Committee meetings as scheduled.

(2) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(3) It is grounds for removal from the Committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, or is absent from at least three consecutive Committee meetings.

(4) The validity of an action of the Committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(h) Procedures.

(1) Any action taken by the Committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The Committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each Committee meeting shall be taken by department staff.

(i) Reporting. The manner in which the Committee will report to the department is by the preparation and submission of committee minutes. In addition, the Commissioner may request that the Committee prepare and submit a report of Committee activities.

(j) Conduct By Members.

(1) The Commissioner, the department, and the Committee shall not be bound in any way by any statement or action on the part of any Committee member except when a statement or action is specifically authorized by the Commissioner or department.

(2) The Committee and its members may not participate in an official capacity in legislative activities in the name of the department or the Committee except with approval of the department. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A Committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's duties.

(4) A Committee member should not disclose confidential information acquired through his or her Committee membership.

(5) A Committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's powers or duties in favor of another person.

(6) A Committee member who has a personal or private interest in a matter pending before the Committee shall publicly disclose the fact in a Committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the Committee member has a direct pecuniary interest in the matter but does not include the Committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(7) A person may not serve as a member of Committee if the person is required to register as a lobbyist under Chapter 305, Government Code because of the person's activities for compensation on a matter related to the Committee.

(k) Committee Member Training.

(1) Before a member of the Committee may assume the member's duties, the member must complete at least one course of the training program established under this subsection.

(2) A training program established under this section shall provide information to the member regarding:

(A) the role and functions of the Committee; and

(B) the requirements of the conflict of interest laws and any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(l) Staff. Staff support for the Committee shall be provided by the department.

(m) Evaluation and Duration.

(1) In accordance with Texas Government Code, §2110.006, department staff responsible for the Texas Wine Marketing Assistance Program shall evaluate the Committee on an annual basis and report its findings to the Commissioner. The evaluation shall be reported to the Legislative Budget Board as required by law.

(2) If the committee is not continued or consolidated with another committee by November 1, 2026, the committee shall be abolished on 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.

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

TRD-202204338
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

CHAPTER 23. [~~TEXAS~~] COMMODITY PRODUCERS BOARDS [~~LAW~~]

The Texas Department of Agriculture (Department) proposes amendments to 4 Texas Administrative Code, §§23.1, 23.21 - 23.23, 23.25, 23.41 - 23.43, 23.100, 23.101, 23.103 - 23.107 and the repeal of §§23.24, 23.26, 23.40, 23.44, 23.102, 23.200, 23.201, 23.220, 23.221, 23.230 - 23.234, 23.240 - 23.248, 23.260 - 23.266, 23.280 and 23.281. The proposed amendments and proposed repeals are collectively referred to as the proposal.

The Department identified the need for the proposal during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §23.1 remove unnecessary definitions already contained in Title 4, Part 1, Chapter 1 that apply to the entire part and provides that the definitions contained in Texas Agriculture Code, Chapter 41, Subchapter A also apply to this chapter. The amendments also add a definition for "commodity process point."

The proposed amendments to §23.21 remove language that is duplicative of sections in Texas Agriculture Code Chapter 41 and breaks existing text into paragraphs for clarity.

The proposed amendments to §23.22 and §23.23 remove the requirement for notice of referenda or elections to be provided in newspapers and industry publications, to reduce costs. The amendments provide referenda to add new territory to boards' jurisdiction will be conducted pursuant to Texas Agriculture Code, §41.034, which has specific requirements to add territory, and make editorial changes for clarity.

The repeal of §23.24 is proposed because it is duplicative of Texas Agriculture Code, §41.033.

The proposed amendments to §23.25 make editorial changes and clarifies language to align with the rulemaking authority provided by Texas Agriculture Code, Chapter 41.

The repeal of §23.26 is proposed because it is duplicative of Texas Agriculture Code, §41.051.

The repeal of §23.40 is proposed because it is duplicative of Texas Agriculture Code, §41.059(a).

The proposed amendments to §§23.41 - 23.43 make editorial changes and replaces "verifies" with "certifies" to utilize terminology consistent with Texas Agriculture Code, Chapter 41.

The repeal of §23.44 is proposed because it is duplicative of Texas Agriculture Code, §41.102.

The proposed amendments to §23.100 replaces "Texas Beef Check-off referendum program" with "state beef check off program" to utilize terminology consistent with Texas Agriculture Code, Chapter 41; changes the name of the entity that is the subject of the subchapter to be consistent with Texas Agriculture Code, Chapter 41; and makes an editorial change.

The proposed amendments to §23.101 replaces a definition for "collection point" with "commodity process point" to utilize terminology consistent with Texas Agriculture Code, Chapter 41 and removes the definition for "producer," a term already defined in Texas Agriculture Code, §41.151(3).

The repeal of §23.102 is proposed because it is duplicative of Texas Agriculture Code, §41.162(a).

The proposed amendments to §23.103 repeal subsections that are duplicative of text in Texas Agriculture Code Chapter 41 and make editorial changes.

The proposed amendments to §23.104 remove an unnecessary requirement for the Beef Promotion and Research Council of Texas to provide copies of any resolutions adopted in its annual report to the Department and makes editorial changes.

The proposed amendments to §23.105 changes "collection point" and "collecting person" to "commodity process point" to utilize terminology consistent with Texas Agriculture Code, Chapter 41.

The proposed amendments to §23.106 changes "collection point" to "commodity process point" to utilize terminology consistent with Texas Agriculture Code, Chapter 41; makes editorial changes; and clarifies when an application for refund of an assessment paid by a cattle producer is considered timely.

The proposed amendments to §23.107 creates a provision for the Beef Promotion and Research Council of Texas to use data to determine an assessment in the event of a failure to remit assessments and makes editorial changes.

The repeal of Subchapter C, concerning the Texas Grain Producer Indemnity Board, is proposed because the Texas Grain Producer Indemnity Board (Board) is inactive and no business necessity exists for the subchapter. Additionally, Texas Agriculture Code, Chapter 41, Subchapter I provides nearly all rulemaking authority to the Board, not the Department. Board rules were previously located primarily in Title 4, Part 6, prior to being repealed and adopted as Subchapter C.

The Department also proposes changes to the title of the chapter, the title of divisions 1-3 of subchapter A, the title of subchapter B, and the rule headings of §§23.22, 23.25, 23.41, 23.42, and 23.107.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposal will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Government Code §2001.0221, the Department provides the following Government Growth Impact Statement for the proposal. For each year of the first five years the proposal will be in effect, the Department has determined the following:

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

(2) implementation of the proposal will not require the creation of new employee positions or the elimination of existing employee positions;

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

(4) the proposal will not require an increase or decrease in fees paid to the Department;

(5) the proposal does not create a new regulation;

(6) the proposal will not expand, limit, or repeal an existing regulations;

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

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Patrick Dudley, Program Director for Agriculture Commodity Boards and Producer Relations, has determined that enforcing or administering the proposal does not have foreseeable implications relating to cost or revenues to the state or local governments.

PUBLIC BENEFITS: Mr. Dudley has determined that for each year of the first five-year period the proposal is in effect, the public benefit will be improved clarity and readability of rules related to commodity producers boards.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL: Mr. Dudley has determined that for each year of the first five-year period the proposal is in effect, there will be no costs to persons who are required to comply with the proposal.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

Comments on the proposal may be submitted to Patrick Dudley, Program Director for Agriculture Commodity Boards and Producer Relations, P.O. Box 12847, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 1. DEFINITIONS [~~GENERAL RULES~~]

4 TAC §23.1

The amendments are proposed under Texas Agriculture Code, §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the amendments.

§23.1. Definitions.

The definitions contained in Texas Agriculture Code, Chapter 41, Subchapter A and Texas Administrative Code, Title 4, Chapter 1, Subchapter A apply to this subchapter. In addition, the [~~The~~] following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Chapter 41--Chapter 41 of the Texas Agriculture Code relating to Commodity Producers Boards certified by the Texas Department of Agriculture.~~]

[~~(2) Board--A commodity producer board certified by the Department and subject to Chapter 41, Texas Agriculture Code and this Chapter.~~]

[~~(3) Commissioner--The Commissioner of the Texas Department of Agriculture or designee.~~]

(1) Commodity process point--Location determined by board where assessments are collected.

(2) [~~(4)~~] County extension agent--An agent of the Texas A&M AgriLife Extension Service.

[~~(5) Department--The Texas Department of Agriculture.~~]

(3) [~~(6)~~] Legislation--Action with respect to Acts, bills, resolutions, or similar items by the Congress, any state legislature, any local council, or similar governing body, or by the public in a constitutional amendment or other similar procedure, including Acts providing appropriations to state or federal entities.

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

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

TRD-202204339
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 2. REFERENDA AND ELECTIONS [~~CERTIFICATION OF COMMODITY ORGANIZATIONS~~]

4 TAC §§23.21 - 23.23, 23.25

The amendments are proposed under Texas Agriculture Code §41.022, which provides the commissioner shall adopt rules regulating the form of the ballot, the conduct of the election, and the canvass and reporting of returns; Texas Agriculture Code §41.023, which provides the commissioner by rule shall prescribe the manner for providing public notice under Texas Agriculture Code Texas Agriculture Code §41.023(a); Texas Agriculture Code §41.032, which provides commodity producers boards shall conduct biennial elections in accordance with the rules of the commissioner; and Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the proposal.

§23.21. Hearing Required for Certification.

[~~(a) To be certified as a Board, a nonprofit organization of agriculture producers must petition the Commissioner for certification as the organization authorized to conduct an assessment referendum and an election of a commodity producers board. A hearing must be held by the Department within 30 days.~~]

[~~(b)~~] Within 21 days of the hearing required by Texas Agriculture Code, Chapter 41, Subchapter B to consider the petition of a nonprofit organization for certification as the organization authorized to conduct an assessment referendum and an election of a commodity producers board, the Commissioner may:

(1) certify the organization by issuing an official certificate; [~~,~~]

(2) ask for additional information; [~~,~~] or

(3) deny certification in writing. If certification is denied, the organization must wait 120 days before petitioning the Commissioner again.

[~~(c) Upon certification, a certified organization may conduct a referendum of the producers of an agricultural commodity on the proposition of whether or not the producers shall levy an assessment on themselves to finance programs of research, disease and insect control, predator control, education, and promotion designed to encourage the production, marketing, and use of the commodity. At the same time, the certified organization may conduct an election of members to a commodity producers board for the commodity.~~]

§23.22. Election Plan [~~Required~~].

(a) Prior to a referendum or an election [~~or referendum~~], an election plan must be submitted to the Department for approval. The election plan must include:

(1) a draft of the notice required by §23.23 of this chapter (relating to Notice of Referendum and/or Election) and a description of how it will be provided [~~to be printed in newspaper and industry publications, as prescribed or approved by the Commissioner~~];

[~~(2) a list of newspapers and industry publications where notices will be published, giving preference to the areas of the greatest production of the specific commodity~~];

(2) [~~(3)~~] an election timeline, including when the notice required by §23.23 of this chapter (relating to Notice of Referendum and/or Election) will be provided [~~publication of newspaper and industry notices, notices to county agents~~], referendum or election date, and canvassing date;

(3) [~~(4)~~] a draft ballot;

[~~(5) draft press release announcing referendum;~~]

(4) [~~(6)~~] a draft of the application for a candidate's name to be printed on the ballot [~~board member petition~~]; and

(5) [~~(7)~~] information on whether balloting will be conducted by mail or in person.

(b) The Commissioner must be notified of biennial board elections and/or referenda to increase assessments at least 90 days prior to the election date. [~~All election and referendum notices must be made in the same manner described in the initial referendum.~~] In the case of a referendum to add [~~adding~~] new territory, notice must be provided as required by Texas Agriculture Code, §41.034 [~~notices will be handled in the same manner as the original referendum~~].

§23.23. Notice of Referendum and/or Election.

(a) Public [~~The certified organization or board, once established, shall give public~~] notice must be provided prior to [~~of~~] a referendum and/or [~~board~~] election. Notice shall be provided [~~published~~] at least once either in print or electronically in one or more publications [~~newspapers published and distributed~~] within the boundaries in which the board operates and reaches producers.

(b) Notice must be provided to each county extension agent in any county within the boundaries in which the referendum or election will take place.

(c) [~~(b)~~] All notices shall be provided [~~published~~] at least 60 days before the date of the referendum and/or election [~~and, except as provided in subsection (c) of this section,~~] and shall include:

(1) the date, hours, and polling places for voting, if held by physical balloting, or, if held by mail balloting, the manner in which ballots will be distributed and deadline for submission of ballots;

(2) where applications for a candidate's name to be printed on the ballot can be obtained and how they can be submitted;

(3) [~~(2)~~] the estimated amount and basis of the assessment proposed to be collected, if applicable;

(4) [~~(3)~~] whether [~~a~~] producer exemptions are [~~exemption is~~] to be allowed, if applicable; [~~or will be collected on a refund-only basis; and~~]

(5) whether assessments will be collected on a refund only basis, if applicable; and

(6) [~~(4)~~] a description of the manner in which the assessment is to be collected and the proceeds administered and used, if applicable.

[~~(c) The items listed in subsection (b)(2) - (4) of this section are not required to be included in a notice for biennial board elections.~~]

[~~(d) In addition to the publication requirement in this section, at least 60 days prior to the date of the election, the certified organization or board, once established, shall give written notice to each county agent in any county within the boundaries in which the election or referendum shall be held.~~]

§23.25. Conduct of Referendum and/or Election [~~Elections~~].

(a) In the case of a mail election, no ballots will be valid if postmarked after [~~midnight on~~] the last day of the election. In physical ballot elections, no absentee ballot will be valid if postmarked after midnight three days before the election.

(b) In physical balloting, balloting locations must be open at hours prescribed by the Commissioner and an election official must be present at all times unless otherwise prescribed by the Commissioner. Ballot boxes must be locked and remain locked [~~unopened~~] until the canvassing committee supervises such opening.

(c) A ballot must bear a signature and the address of the producer to be valid.

(d) Instructions for election officials and voters will be available in each election from the certified commodity organization and approved by the Commissioner.

(e) Ballots will be counted by a canvassing committee consisting of a county judge (or representative) from the area, a county extension agent [~~representative of the Texas AgriLife Extension Service~~], a representative of the certified commodity organization or board, and a representative of the Department.

(f) In all elections, results must be [~~certified and~~] submitted to the Commissioner for certification [~~verification~~].

(g) All ballots shall be locked in a container and stored with the county clerk's office or the office of [~~in the county designated by~~] the certified organization or board. If no contests [~~or investigations~~] arise out of the election within 45 days after the day of the referendum or [~~such~~] election, the ballots shall be destroyed [~~clerk shall destroy~~] by shredding with notice to [~~or burning and notify~~] the certified organization or board and the Commissioner [~~by mail~~].

(h) Any [~~Whereas the closed stored container cannot be opened during a 45 day period without a court order, any~~] contest of the referendum and/or election [~~or investigation~~] must be filed in a court of competent jurisdiction [~~district court in the area of the referendum and election~~] within 30 days after the ballots have been canvassed [~~day ballots are counted~~].

[~~(i) In any case, if a recount is allowed by the district judge, the judge shall have the power to impound said locked ballot boxes and appoint a new canvassing committee consisting of four new members from the same background of the original canvassing committee and a fifth member being a representative from the Attorney General's Office of the State of Texas.~~]

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

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

TRD-202204340
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 2. CERTIFICATION OF COMMODITY ORGANIZATIONS

4 TAC §23.24, §23.26

The repeals are proposed under Texas Agriculture Code §41.022, which provides the commissioner shall adopt rules regulating the form of the ballot, the conduct of the election, and the canvass and reporting of returns and Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the repeals.

§23.24. Geographic Representation of Board Members.
§23.26. Certification of the Board.

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

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

TRD-202204341
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 3. BUDGET APPROVAL AND COMMODITY ASSESSMENTS

4 TAC §23.40, §23.44

The repeals are proposed under Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the repeals.

§23.40. Budget Approval Required.
§23.44. Penalty and Remedies.

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

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

TRD-202204343
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 3. [~~BUDGET APPROVAL AND COMMODITY~~] ASSESSMENTS

4 TAC §§23.41 - 23.43

The amendments are proposed under Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the amendments.

§23.41. Enactment of Assessments [~~Assessment of Funds~~].

(a) Assessments will be officially enacted the day the board notifies [~~notified~~] appropriate commodity process points [~~collection points of the commodity~~] by registered or certified mail indicating [~~of~~] the date the assessment will be collected [~~on all production of that commodity~~] within the assessment area, and remitted as prescribed by the board [~~Board~~].

(b) No assessment money can be expended by the board, other than refund payments, until 60 days after the assessment has been enacted [~~in force~~].

§23.42. Assessment Restrictions [~~on Use of Producer Assessments~~].

(a) Assessments may not be used to directly or indirectly promote or oppose the election of candidates for public office or influence legislation.

(1) Entities and individuals receiving funding from a board shall not use funds to support or oppose the election of candidates for public office or influence legislation.

(2) Assessments may not be used to fund research which shall be utilized solely to influence legislation.

[~~(a) General statement. Except as otherwise provided in this section, funds assessed or collected by a board organized under Chapter 41, may not be expended to directly or indirectly promote or oppose the election of any candidate for public office or to influence legislation.~~]

(b) The [~~Actions to influence legislation. Except as otherwise provided in this section, the~~] term "influence legislation" includes, but is not limited to:

(1) any attempt to affect the opinions of the general public or any segment thereof regarding pending or anticipated legislation;

(2) communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of pending or anticipated legislation;

(3) contacting or urging the public or [~~commodity~~] producers covered by a board to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation;

(4) actively advocating the adoption or rejection of legislation by filing formal comments in support of or in opposition to pending or anticipated legislation; or

(5) [~~any communication with members made for the purpose of~~] encouraging members or producers to do any of the actions identified in paragraphs (1) - (4) of this subsection.

(c) [~~Actions not influencing legislation.~~] The term "influence legislation" does not include the following:

(1) the development and recommendation to the legislature of amendments to Texas Agriculture Code, Chapter 41;

(2) communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, or industry information activities under Texas Agriculture Code, Chapter 41;

(3) any action designed to market an agricultural [~~a~~] commodity or commodity products directly to a foreign government or political subdivision thereof;

(4) making the results of nonpartisan analysis, study, or research available to the public or producers;

(5) providing technical advice or assistance [~~(where such advice would otherwise constitute the influencing of legislation)~~] to a governmental body, [~~or to~~] a committee, or other subdivision thereof, including appearances before any such body, committee or subdivision, in response to a request by such body, committee or subdivision[~~, as the case may be~~];

(6) appearances before, or communications to, any legislative body with respect to a possible decision [~~of such body~~] which could [~~might~~] affect the existence of the organization, its powers and duties, or tax-exempt status;

(7) communications between the board and [~~commodity~~] producers represented by the board with respect to legislation or proposed legislation of direct interest to the organization and such producers, other than communications permitted by [~~described in subsection (b) of~~] this section;

(8) any communication with a government official or employee, other than a communication with a member or employee of a legislative body where such communication would otherwise constitute the influencing of legislation; and

(9) publication of [~~newsletter~~] articles regarding pending legislative issues of interest to members or producers which contain neutral, factual reports.

[~~(d) Promoting or opposing election of candidates for public office. Activities that constitute promoting or opposing election of candidates for public office include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.~~]

[~~(e) Prohibition against indirect funding of actions to influence legislation or promoting or opposing the election of candidates for public office.~~]

[~~(1) Entities and individuals receiving funding from a board organized under Chapter 41 shall not use any such funds to influence legislation, as defined in this section, or for supporting or opposing election of a candidate for public office.~~]

[~~(2) Producer assessments may not be used to fund research which shall be utilized solely to influence legislation, as that term is defined in this section.~~]

§23.43. Discontinuance of Assessment.

If a referendum is held for the discontinuance of an assessment and the Commissioner certifies [~~verifies~~] the results in favor of discontinuance, then the assessment collection shall become void immediately. All commodity process [~~collection~~] points shall be notified by registered or certified mail by the board within 10 days to discontinue collection of the assessment. The board must submit to the Commissioner within 90 days a plan of disbandment. All remaining money after obligations have been paid shall be expended for projects of research, disease and insect control, predator control, education, and promotion, designated to encourage the production marketing and use of the agricultural commodity upon which the assessment was levied. Books will be audited [~~by a state auditor~~] and will be filed with the Commissioner.

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

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

TRD-202204342

Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

SUBCHAPTER B. [~~TEXAS~~] BEEF PROMOTION AND RESEARCH COUNCIL OF TEXAS

4 TAC §§23.100, 23.101, 23.103 - 23.107

The amendments are proposed pursuant to Texas Agriculture Code §41.163, which provides the commissioner may adopt rules as necessary to implement Texas Agriculture Code, Chapter 41, Subchapter H.

Chapter 41 of the Texas Agriculture Code is affected by the amendments.

§23.100. Scope and Conflict of Law.

Texas Agriculture Code, Chapter 41, Subchapter H and this subchapter govern the [~~Texas~~] Beef Promotion and Research Council of Texas and the state beef check off program [~~Texas Beef Check-off referendum program~~]. To the extent that there is a conflict with other sections of [~~Chapter 23 of~~] this chapter [~~title~~], this subchapter shall control.

§23.101. Definitions.

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

(1) Cattle--Live domesticated bovine animals regardless of age.

(2) Commodity process point--Location determined by the Council where assessments are collected. [~~Collection Point--The person or entity prescribed by the Council that is responsible for collecting and remitting an assessment pursuant to Texas Agriculture Code, Chapter 41.~~]

(3) Council--The Beef Promotion and Research Council of Texas, [~~as~~] established pursuant to [~~under~~] Texas Agriculture Code, Chapter 41, Subchapter H.

(4) Extension--Texas A&M AgriLife [~~Agrilife~~] Extension Service.

(5) Headquarters--The principal office of the Texas Department of Agriculture located in Austin, Texas.

(6) Physical balloting [~~Balloting~~]--A designated location determined by the Commissioner where an eligible producer may vote in person.

[~~(7) Producer--Any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subchapter if:~~]

[~~(A) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or~~]

[~~(B) the person:~~]

~~*(i)* acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party;~~]

~~*(ii)* resold such cattle no later than ten days from the date on which the person acquired ownership; and~~]

~~*(iii)* certified, as required by procedures prescribed by the Council, that the requirements of this provision have been satisfied.~~]

§23.103. Conduct of Referendum.

(a) Upon request of the Council, the Commissioner shall conduct and prescribe the manner to conduct a referendum [~~as authorized~~] under [~~Chapter 41 of the~~] Texas Agriculture Code, §41.162.

[~~(b) The Commissioner shall propose in a referendum the:~~]

[~~(1) maximum assessment to be paid by cattle producers; and~~]

[~~(2) the manner in which the assessment will be collected.~~]

[~~(c) With the Commissioner's approval, the Council may set the assessment at a level less than the maximum assessment approved by the referendum.~~]

(b) [~~(d)~~] Notice of the referendum shall be published at least once in one or more newspapers published and distributed within the boundaries in which the Council operates. The notice shall be published at least 60 days before the date of the referendum. In addition, at least 60 days before the date of the referendum, the Department will give direct written notice to each Extension [~~county cooperative extension~~] office in the state.

(c) [~~(e)~~] Notice provided in accordance with subsection (b) [~~(d)~~] of this section shall include:

(1) the date of the referendum;

(2) the manner in which the referendum is to be conducted and the assessment collected;

(3) the purpose of the referendum;

(4) if an assessment referendum is being conducted, the maximum assessment to be paid by [~~cattle~~] producers;

(5) if held by physical balloting, the date, hours, and polling places for voting in the referendum and election, and the manner in which ballots will be distributed and deadline for submission of ballots;

(6) whether a producer exemption is to be allowed, or whether the assessment shall be collected on a refund-only basis; and

(7) who to contact for more information.

[~~(f) An eligible producer may vote only once in a referendum and each vote is of equal weight.~~]

[~~(g) A referendum is approved if a simple majority of votes cast are cast in favor of the referendum.~~]

[~~(h) All voter information, including a producer's vote in a referendum conducted under this section, is confidential and not subject to disclosure under Chapter 552, Government Code.~~]

(d) [~~(i)~~] Ballots must bear the signature and the address of the producer to be valid. A producer's signature on the ballot certifies that the voter owned cattle in the last 12 months before the date of the referendum.

[~~(j) Ballots for the referendum will be counted in a manner determined by the Commissioner.~~]

(e) [~~(k)~~] A canvassing committee appointed by the Commissioner shall count the ballots and verify the referendum results to the

Commissioner for certification. Referendum results will be certified by the Commissioner.

(f) [(l)] After the ballots are canvassed [counted] and the results certified [verified] by the Commissioner, the ballots shall be locked in a container and stored at the Headquarters for a period of 45 [30] days. The [closed stored] container containing referendum ballots cannot be opened for the 45-day [30-day] period without a court order or written request for recount. If no contests [or investigations] arise out of the referendum within 45 [30] days after certification of such referendum, the Commissioner shall destroy the ballots by shredding.

[(m) The Department will be reimbursed by the Council for all costs associated with conducting a referendum under this subchapter.]

(g) [(n)] The referendum will be conducted in person and ballots will be available for eligible producers to vote at all [county] Extension offices. Eligible producers may vote during normal office hours of the [county] Extension offices during the voting period.

(1) An eligible producer who is unable to access an [a county] Extension office to vote may request a mail ballot by contacting Headquarters. No eligible producer requesting a mail ballot shall be refused a ballot.

(2) Ballots will be mailed to Headquarters, by the [county] Extension offices via paid postage and by a deadline to be determined by the Department;

(3) Ballots submitted to the Department by mail shall be maintained at Headquarters.

(h) [(o)] A watcher may be present at Headquarters for the purpose of observing the processing of election results and until members of the canvassing committee complete their duties. Written notice of intent to be present during processing must be submitted to the Department at least 3 days prior to canvassing [the count].

(i) [(p)] Request for Recount. A request for recount [submitted under this division] must:

(1) be in writing;

(2) state the grounds for the recount;

(3) be submitted to the Commissioner within 10 calendar days of canvass results; and

(4) be signed by the person requesting the recount or, if there is more than one person, any one [1] or more of them and state each requesting person's name and residence address. If the request is made on behalf of an organization or association, the person submitting the request must state that they are authorized to request a recount on behalf of the organization or association.

(j) [(q)] Conduct of Recount. A recount will be conducted by the Department, under the supervision of a representative of the Office of the Secretary of State.

§23.104. Requirements of the Council.

(a) The Council shall have an annual independent audit of the books, records of account and minutes of proceedings maintained by the Council prepared by an independent certified public accountant or firm of independent certified public accountants. The audit shall be filed with the Council and[,] the Commissioner and shall be made available to the public upon request to [by] the Council or the Commissioner. The state auditor or the Department may examine any work papers from the independent audit or may audit the transactions of the Council if the state auditor or the Department's internal auditor determines that an additional audit is necessary.

(b) Not later than the 30th day after the last day of the fiscal year the Council shall submit to the Commissioner a report itemizing all income and expenditures and describing all activities of the Council during the preceding fiscal year. The annual report shall include, at a minimum:

(1) a balance sheet of assets and liabilities;

(2) an itemization of income/expenditures and;

(3) a statement of Council activities carried out in the year covered by the report.[; and]

[(4) copies of any resolutions adopted by the Council regarding the program.]

(c) The Department may allow for late filings of the report required by subsection (b) of this section for good cause.

(d) The Council shall provide fidelity bonds in amounts determined by the Council for employees or agents who handle funds for the Council.

(e) The [Prior to any expenditure of funds, the] Council shall submit its annual budget to the Commissioner for approval, prior to any expenditure of funds. The Commissioner [Department] shall act on the Council's budget submission within 45 days of [the Department's] receipt of the submission.

§23.105. Collection of Assessments.

(a) The assessment shall be collected at commodity process [collection] points [determined by the Council]. Except as provided by subsection (b) of this section, the commodity process [collection] point shall collect the assessment by deducting the appropriate amount from the purchase price of the cattle or from any funds advanced for that purpose.

(b) If the producer and commodity process point [collecting person] are the same legal entity, or if the producer retains ownership after processing, the commodity process point [collecting person] shall collect the assessment directly from the producer at the time of processing/sale.

(c) The secretary-treasurer of the Council, by registered or certified mail, shall notify each known commodity process [collection] point of the duty to collect the assessment, the manner in which the assessment is to be collected, and the date on or after which the commodity process [collection] point is to begin collecting the assessment.

(d) The amount of the assessment collected shall be clearly shown on the sales invoice or other document evidencing the transaction. The commodity process point [collecting person] shall furnish a copy of the document to the producer.

(e) Unless otherwise provided by the original referendum, no later than the 15th day of each month, the commodity process [collection] point shall remit the amount collected during the previous month to the secretary-treasurer of the Council, along with a completed form prescribed by the Council [board] reflecting such amount.

(f) The timeliness of a payment to the Council shall be based on the applicable postmark date or the date actually received by the Council, whichever is earlier.

§23.106. Refunds.

(a) A producer who has paid an assessment in accordance with §23.105 of this subchapter [title,] (relating to Collection of Assessments), may obtain a refund of the amount paid by filing an application for refund with the secretary-treasurer within 60 days after the date of

assessment [~~payment~~]. The application must be [~~in writing,~~] on a form prescribed by the Council [~~for that purpose,~~] and accompanied by proof of payment of the assessment.

(b) The timeliness of an application for refund shall be based on the applicable postmark date or the date actually received by the Council, whichever is earlier.

(c) [~~(b)~~] Provided [~~Providing~~] that the assessment has been remitted to the Council by the commodity process [~~collection~~] point, the secretary-treasurer shall pay the refund to the producer before the 11th day of the month following the month in which the application for refund and proof of payment are received.

§23.107. Penalties [~~for Late Payment~~].

(a) Any unpaid assessments due to the Council pursuant to §23.105 of this subchapter [~~title,~~] (relating to Collection of Assessments)[~~,~~] shall be increased 2.0 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this section, any assessment that was determined at a date later than prescribed by this subchapter [~~subpart~~] because of a person's failure to submit a report to the Council when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) Upon failure to remit assessments, the Council may use data to determine a fair assessment in order to provide a basis for penalty as found in subsection (a) of this section. Data used by the Council to determine a fair assessment may include, but is not limited to, historical sales trends, market reports, or information provided by other governmental agencies.

(c) [~~(b)~~] Violations of this subchapter may be referred to the Department for assessment of administrative penalties, civil or criminal penalties, or the suspension or revocation of a Department issued license in accordance with Chapter 41 of the Agriculture 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.

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

TRD-202204344
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

SUBCHAPTER B. TEXAS BEEF PROMOTION AND RESEARCH COUNCIL

4 TAC §23.102

The repeal is proposed pursuant to Texas Agriculture Code §41.163, which provides the commissioner may adopt rules as necessary to implement Texas Agriculture Code, Chapter 41, Subchapter H.

Chapter 41 of the Texas Agriculture Code is affected by the repeal.

§23.102. Voter Eligibility.

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

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

TRD-202204345
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

SUBCHAPTER C. TEXAS GRAIN PRODUCER INDEMNITY BOARD

DIVISION 1. GENERAL PROVISIONS

4 TAC §23.200, §23.201

The repeals are proposed pursuant to Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the repeals.

§23.200. Scope and Applicability.
§23.201. Definitions.

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

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

TRD-202204346
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 2. ELECTIONS AND REFERENDUM

4 TAC §23.220, §23.221

The repeals are proposed pursuant to Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the repeals.

§23.220. Voter Eligibility.
§23.221. Conduct of Referendum.

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

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

TRD-202204347
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 3. BOARD MEMBERS AND MEETINGS

4 TAC §§23.230 - 23.234

The repeals are proposed pursuant to Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the repeals.

§23.230. Meetings.
§23.231. Election of Officers.
§23.232. Management of Budget.
§23.233. Selection of Board Agents.
§23.234. Reporting Requirements.

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

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

TRD-202204348
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 4. PRODUCER ASSESSMENTS

4 TAC §§23.240 - 23.248

The repeals are proposed pursuant to Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the repeals.

§23.240. Maximum Assessment Rate.
§23.241. Assessment Calculation.
§23.242. Notice to Grain Buyers.
§23.243. Grain Buyer Collection.
§23.244. Remittance of Assessment.
§23.245. Grain Producer Reporting.
§23.246. Refunds.
§23.247. Discontinuance of Assessment.
§23.248. Restrictions on Use of Producer Assessments.

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

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

TRD-202204349
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 5. CLAIMS

4 TAC §§23.260 - 23.266

The repeals are proposed pursuant to Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the repeals.

§23.260. Initiation of Claims.
§23.261. Claim Review and Determination.
§23.262. Denial of Claim.
§23.263. Award.
§23.264. Subrogation.
§23.265. Borrowing Funds.
§23.266. Use of Reinsurance.

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

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

TRD-202204350
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 6. APPEALS AND REMEDIES

4 TAC §23.280, §23.281

The repeals are proposed pursuant to Texas Agriculture Code §12.016, which provides the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

Chapter 41 of the Texas Agriculture Code is affected by the repeals.

§23.280. Administrative Review.
§23.281. Penalties and Remedies.

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

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

TRD-202204351
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

CHAPTER 26. FOOD AND NUTRITION DIVISION
SUBCHAPTER B. NUTRITION WORKING GROUPS

4 TAC §26.21

The Texas Department of Agriculture (the Department) proposes the repeal of Title 4, Part 1, Chapter 26, Subchapter B, §26.21. The proposed repeal is the result of a review of the subchapter pursuant to the four-year rule review prescribed by Texas Government Code §2001.039.

The repeal of §26.21 is proposed because it is duplicative of Texas Agriculture Code §12.0026.

Ms. Lena Wilson, Assistant Commissioner, Food & Nutrition Division, has determined that for each year of the first five years the proposed repeal is in effect, no fiscal implications are anticipated for the state or local governments as a result of enforcing or administering the proposed repeal.

Ms. Wilson has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated would be the removal of a duplicative and unnecessary rule. There are no anticipated economic costs to the public.

Ms. Wilson has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed repeal is in effect:

1. the proposed repeal does not create or eliminate a government program;

2. implementation of the proposed repeal does not require the creation or elimination of employee positions;

3. implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Department;

4. the proposed repeal does not require an increase or decrease in fees paid to the Department;

5. the proposed repeal does not create a new regulation;

6. the proposed repeal will repeal an existing regulation;

7. the proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and

8. the proposed repeal does not positively or adversely affect this state's economy.

The proposed repeal will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted by mail to Ms. Susana Esparza, Assistant General Counsel for Food & Nutrition, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to susana.esparza@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 12.

§26.21. Interagency Farm-To-School Coordination Task Force.

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

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

TRD-202204375
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

CHAPTER 29. ECONOMIC DEVELOPMENT
SUBCHAPTER A. ECONOMIC DEVELOPMENT PROGRAM

4 TAC §§29.1 - 29.3

The Texas Department of Agriculture (Department) proposes the repeal of Texas Administrative Code, Title 4, Part 1, Chapter 29, Subchapter A, Economic Development Program, comprised of §§29.1 - 29.3. The Department identified the need for the proposed repeal during its rule review of Chapter 29, Subchapter A, conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The repeal of Texas Administrative Code, Title 4, Part 1, Chapter 29, Subchapter A, is proposed due to a lack of business necessity for the rules. During its rule review, the Department determined that the rules contain an erroneous cross reference to statute and are also substantially similar to the language of the authorizing statute, Texas Agriculture Code §12.027. Therefore, the rules are not necessary to the maintenance and administration of the Economic Development Program. In the event new rules become necessary to properly administer the program, the Department will propose new rules at such time.

The Department has determined that the proposed repeals will not affect a local economy, therefore the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact State-

ment for the proposed repeals. For each year of the first five years the proposed repeals will be in effect, the Department has determined the following:

1. No government programs will be created or eliminated. While the rules for a program would be repealed, the program itself would not be eliminated. The maintenance and administration of the Economic Development Program remains authorized by Texas Agriculture Code, §12.027;

2. No employee positions will be created or eliminated;

3. There will not be an increase or decrease in future legislative appropriations to the Department;

4. There will be no increase or decrease in fees paid to the Department;

5. There will be no new regulations created by the proposal;

6. The proposed repeals will repeal an existing regulation;

7. The proposed repeals neither increase nor decrease the number of individuals subject to the rules' applicability; and

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

Karen Reichek, Administrator for Trade and Business Development, has determined that for each year of the first five years the proposed repeals are in effect, enforcing or administering the proposed repeals does not have foreseeable implications relating to costs or revenues of the state or local governments.

Ms. Reichek has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the elimination of unnecessary rules. Ms. Reichek has also determined that for each year of the first five-year period the proposed repeals are in effect, there will be no cost to individuals.

The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeals, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Written comments on the proposed repeals may be submitted to Ms. Karen Reichek, Administrator for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: Karen.Reichek@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeals are proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 12.

§29.1. Maintenance of Economic Development Program.

§29.2. Administration of the Program.

§29.3. Staffing; Cooperation with Other Agencies.

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

Filed with the Office of the Secretary of State on November 2, 2022.

TRD-202204337
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 18. TEXAS HOLOCAUST, GENOCIDE, AND ANTISEMITISM ADVISORY COMMISSION

13 TAC §§18.1, 18.3, 18.5, 18.7

The Texas Historical Commission (THC) proposes new Chapter 18, §§18.1. 18.3, 18.5, and 18.7 related to the creation of Administrative Rules for the Texas Holocaust, Genocide, and Antisemitism Advisory Commission (THGAAC).

Chapter 18 creates a process for operations for the THGAAC

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five years the proposed new rules are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the new rule as proposed. The related policy and procedure are in place for this rule and there is no anticipated additional cost as a result of the rulemaking.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the rule is in effect, the anticipated public benefit will be enhanced transparency on agency policy and procedure.

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

COSTS TO REGULATED PERSONS. The proposed new rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The proposed new rules provide an opportunity for the THC and THGAAC to support the operation and delegation of decisions and authorities to assist with implementation of goals and objectives for the THGAAC. There is no anticipated economic impact of these new rules. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing this new rule and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. The proposed new rule does not affect small businesses, micro-businesses, or

rural communities because the new rule only clarifies the administrative procedures with which to carry out existing statutes.

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

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

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. These new rules are proposed under the authority of Texas Government Code §448.102(b), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission.

CROSS REFERENCE TO STATUTE. The new rules implement §448 of the Texas Government Code.

§18.1. General Provisions

(a) Pursuant to Texas Government Code Section 448, the Texas Holocaust, Genocide, and Antisemitism Advisory Commission (THGAAC) performs its statutory duties as an advisor to the Texas Historical Commission (THC) consistent with Government Code Chapter 442.

(b) THGAAC shall provide advice and guidance to THC on matters related to the Holocaust and other genocides and antisemitism, generally. Such guidance may, on occasion, take the form of recommendations that THC carry out certain actions consistent with THC and THGAAC's respective enabling acts, such as making grant awards, approving travel for staff and advisory commission members, approving contract amendments in certain amounts or for certain terms, or adopting administrative rules governing the operation of THGAAC.

§18.3. Administration

(a) The THGAAC shall hold regular quarterly meetings. The THGAAC may hold such other meetings at such other times and places as it may schedule in formal session. The chair may call special meetings of the advisory commission at his or her discretion, provided that 10-days' notification is given to the advisory commission members. The chair shall call special meetings of the advisory commission at any time upon written request to the chair signed by a quorum of the THGAAC, provided that 10-days' notification is given to the advisory commission members. Members of the public shall be provided with a reasonable opportunity to appear before the THGAAC at every meeting of the THGAAC and to speak on any issue under the jurisdiction of the THGAAC. The time for each person to speak may be limited by the chair to expedite the business of the advisory commission.

(b) Five members of the advisory commission constitutes a quorum authorized to transact businesses of the advisory commission.

(c) No proxies for advisory commission members are allowed.

(d) At the last quarterly meeting in odd-numbered years beginning in 2023, the chair shall appoint three people to serve on a nominating committee, including a chair of that committee. The positions available for nomination by the committee are the vice chair and secretary. The nominating committee will nominate only one person for each elective office on the advisory commission. A committee member shall contact each person it wishes to nominate in order to obtain the person's acceptance of nomination. An advisory commission member may hold only one elective office on the advisory commission at a time. The chair may appoint an interim nominating committee to bring forward candidates for vice chair and secretary for the advisory commission's consideration, to serve until the first nominating committee is created under this subsection in 2023 and an election can be held.

(e) The nominating committee will present its report of nominees at the first advisory commission meeting in even-numbered years beginning in 2024. The chair shall call for further nominations from the floor. After all nominations are made, the chair will close the nominations and ask for a vote by voice or show of hands. If there is a simple majority for one person for an elective office, that person is deemed elected. If there is not a majority for any one person in an office, the advisory commission shall hold an election runoff for each such office between the two people receiving the highest number of votes for that office.

(f) In the event of a vacancy in any elective office of the advisory commission, an election shall be held at the next advisory commission meeting, except the first advisory commission meeting of odd-numbered years, to fill such vacancy. The chair shall call for nominations from the floor. After all nominations are made, the chair will close the nominations and ask for discussion. Upon the close of discussion, the chair will ask for a vote. If there is a simple majority for one person, that person is elected. If there is not a majority for any one person, an election runoff shall immediately be held between the two people receiving the highest number of votes.

(g) The chair shall perform such duties as are properly required of him or her by the advisory commission. The chair shall preside at all meetings, shall have general supervision of the affairs of the advisory commission, and shall have authority to interpret and carry out all decisions of the advisory commission.

(h) The vice-chair shall perform such duties as the advisory commission, or the chair may direct. The vice-chair shall preside over advisory commission meetings and carry out the chair's duties if the chair is absent or unavailable.

(i) The secretary shall certify the minutes of all meetings of the advisory commission after the advisory commission has approved them and shall perform such other duties as may be prescribed by the advisory commission or the chair. The secretary shall preside over commission meetings and carry out the chair and the vice-chair's duties if the chair and the vice-chair are absent or unavailable.

(j) The executive committee consists of the chair, vice-chair, secretary, and immediate past chair of the THGAAC if that person is still a member of the advisory commission, as well as other members of the advisory commission appointed by the chair, not to exceed four members total. The committee may act on behalf of the advisory commission with its advance approval. In the absence of advance approval by the advisory commission, any action of the executive committee may be placed on the agenda of the next meeting of the advisory commission for ratification.

(k) The chair may appoint such additional committees from the members of the THGAAC as the chair deems necessary, consistent with the duties of the THGAAC as defined in Government Code §448.101. The chair serves as a non-voting ex officio member on each committee except the nominating committee.

(l) THC shall provide to THGAAC such staff positions as are authorized and funded by the Texas legislature to carry out THGAAC duties. Staff will be provided with office space and with necessary and appropriate equipment and vehicles to carry out their assignments. Staff must meet all standards and requirements for employment by THC and shall perform duties in accordance with direction received from THGAAC. If THGAAC members are dissatisfied with staff performance, they shall report this to the executive director of THC, and the two entities shall work together to attempt to resolve performance issues. Any final decision on hiring, assigning, placing under probation, or terminating an employee is solely the responsibility of the executive director of THC.

(m) Staff job classifications, salaries, benefits, assigned equipment, vehicles, and staff policies and procedures shall be consistent with those used by THC for its internal affairs and shall be subject to approval by the executive director of THC.

(n) The executive director of THGAAC shall be a direct report to the executive director of THC, who shall be responsible for developing THGAAC's executive director's workplan and for overseeing and rating performance under that plan. In developing said workplan and any performance reviews thereunder, the executive director of THC shall consult with the chairs of THC and THGAAC.

(o) THC may choose to assign one or more THC commissioners or THC staff members as liaisons to THGAAC. Such THC liaisons shall be permitted to attend public portions of any and all meetings of the THGAAC.

(p) The THGAAC's chair or other member or staff of the advisory commission will present a formal report on recent THGAAC activities at each THC quarterly meeting.

(q) THC shall provide administrative services to THGAAC including budgeting, purchasing, accounting, human resources, information technology, fleet management, and office maintenance. THC shall be reimbursed for costs associated with its performance of the duties described herein, and will withdraw such amounts from the legislative appropriation supporting THGAAC.

(r) THGAAC commissioners shall be entitled to reimbursement of reasonable expenses incurred in attending publicly-posted meetings of the THGAAC its committees. In addition, commissioners shall be entitled to reimbursement for travel expenses incurred while transacting advisory commission business if, in advance of such travel, the commissioner obtains written approval for reimbursement from the commission chair.

§18.5. Contracts

(a) The THC may enter into contracts with one or more nonprofit organizations to assist the advisory commission in fulfilling its duties.

(b) Each such contract shall clearly establish the role of the nonprofit, the nature of the relationship between the nonprofit and the THC and the THGAAC, the performance expectations for the nonprofit, any requirements or expectations regarding the activities and the employees of the nonprofit, the THC's expectations regarding ownership of products developed by the nonprofit, the THC's long-term goals for the THGAAC and the nonprofit's role in achieving those goals, a system for evaluating the nonprofit's performance, and what support, if any, THC will provide to the nonprofit in fulfillment of the contract.

(c) The provisions of TAC, Title 3, Part 2, Ch 11, Subchapter A, §11.9 relating to "Donations & Relationships with affiliated nonprofit organizations" will apply to any relationship between the THC, THGAAC, and a nonprofit organization pursuant to this section.

§18.7. Related Non-Profit organization

The THC may enter into a relationship with a non-profit organization, the purpose of which is to raise funds for or provide services or other benefits to the THGAAC. The relationship between the non-profit and THGAAC, including the detailed roles of each entity, must be reduced to writing in a Memorandum of Understanding (MOU), which must be approved by the THC to be effective. Also included in the MOU will be performance expectations for the nonprofit, any requirements or expectations regarding the activities and the employees of the nonprofit, and the THC's expectations regarding ownership of products developed by the nonprofit.

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

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204421
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 463-6100

♦ ♦ ♦

PART 9. TEXAS HOLOCAUST, GENOCIDE, AND ANTISEMITISM ADVISORY COMMISSION

CHAPTER 191. COMMISSION PROCEDURES

13 TAC §§191.1, 191.3 - 191.9

On behalf of the Texas Holocaust, Genocide and Antisemitism Advisory Commission (THGAAC), the Texas Historical Commission (THC) proposes the repeal of Chapter 191, §§191.1, 191.3 - 191.9, THGAAC, relating to the THGAAC Commission procedures.

This repeal is needed as part of the THC's overall effort to align with H.B. 3257 which eliminated the Texas Holocaust and Genocide Commission, created the new THGAAC and clarified the THC's statutory authority. In a separate action, the THC contemporaneously proposes a new Chapter 18, TAC Title 13, Part 2, relating to the Texas Holocaust, Genocide and Antisemitism Advisory Commission which will replace the repealed section.

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

PUBLIC BENEFIT/COST NOTE. The benefit to the public will be to allow for the development of new rules under THC's section of the Texas Administrative Code which will provide an operational understanding of the relationship between the THC and the THGAAC.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no effect on the local economy for the first five years that the proposed repeal is in effect; therefore, no local employment

impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

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

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing this new rule and therefore no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is required. There are no anticipated economic costs to the public in compliance with this repeal, as proposed.

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

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

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

STATUTORY AUTHORITY. This repeal is proposed under the authority of Texas Government Code§ 448.102(b), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission.

CROSS REFERENCE TO STATUTE. The repealed rules will implement Section 448 of the Texas Government Code.

§191.1. Definitions.
§191.3. Administration.
§191.4. Code of Conduct and Ethics Policy.
§191.5. Finances.
§191.6. Relationship with Affiliated Non-Profit Organizations.
§191.7. Advisory Committees.
§191.8. Grant Program.
§191.9. Interaction with the Texas Historical Commission.

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

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204420
Mark Wolfe
Executive Director
Texas Holocaust, Genocide, and Antisemitism Advisory Commission
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 463-6100

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. CONTINUING EDUCATION

22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §73.3 (Requirements for Sponsors of Continuing Education). The Board will propose a new §73.3 in a separate rulemaking. This rulemaking action will update language of what topics a sponsor of continuing education may provide to licensees.

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

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to update the topics a sponsor of continuing education course may provide to licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.18. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

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

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701-1319, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic) and Texas Occupations Code §201.356 (which authorizes the Board to establish continuing education requirements).

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

§73.3. Requirements for Sponsors of Continuing Education Courses.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204395
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §73.3 (Requirements for Sponsors of Continuing Education Courses). The current §73.3 is being repealed in a separate rulemaking action.

Under Texas Occupations Code §201.356, the Board is required to adopt requirements for its licensees for continuing education courses relating to the practice of chiropractic. The Board has done so in the current 22 TAC §73.3; however, the Board has determined that the topics contained in current subsection (j)(4) of needed minor revisions. Those have been updated.

Additionally, the proposed new version of the rule clarifies that topics for instruction must be within or relate to the chiropractic scope of practice. As portal-of-entry healthcare providers in Texas, chiropractors, while performing a differential diagnosis of a patient, must be able to recognize conditions that may not be within their scope of practice in order to properly refer a patient to another healthcare provider. The proposed rule keeps the current requirement that all continuing education courses must be approved by the Board beforehand.

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

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to update the continuing education topics relating to chiropractic that may be taught to licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §73.3. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and Texas Occupations Code §201.356 (which requires the Board to establish continuing education relating to chiropractic for its licensees).

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

§73.3. Requirements for Sponsors of Continuation Education Courses.

(a) The Board may only approve continuing education courses sponsored by a chiropractic college accredited by the Council on Chiropractic Education or a statewide, national, or international professional association.

(b) A continuing education course sponsor shall submit a separate application for each course at least 60 days in advance.

(c) For each course application, a sponsor shall submit:

(1) course title, subject, and description;

(2) number of requested credit hours;

(3) course date, time, and location;

(4) method of instruction;

(5) course coordinator's name, address, and telephone number;

(6) signature of the sponsor's representative;

(7) a detailed hour-by-hour syllabus describing the material taught in each hour block;

(8) names of all instructors for each block of instruction;

(9) all instructors' curriculum vitae;

(10) proposed advertising showing the course title and content; and

(11) application fee.

(d) A sponsor shall certify the course complies with all Board requirements.

(e) The Board shall notify a sponsor in writing whether a course has been approved.

(f) A sponsor shall hold a Board-approved live course only on the date submitted on the application.

(g) A sponsor may offer a Board-approved recorded online course for up to one calendar year after approval.

(h) If a continuing education program consists of separate sessions on different topics and on different dates, each session is a separate course.

(i) If the same course is held in multiple cities with different speakers, each location is a separate course.

(j) To be approved, each course must:

(1) be presented by instructors with knowledge, training, and expertise in the topic;

(2) have content designed to maintain professional competency;

(3) be within or relate to the chiropractic scope of practice in Texas; and

(4) be on one or more of the following:

(A) the chiropractic scope of practice under Occupations Code Chapter 201, Board rules, and other applicable law;

(B) basic science;

(C) differential diagnosis;

(D) diagnostic imaging;

(E) public health;

(F) musculoskeletal manipulation or chiropractic adjusting technique;

(G) chiropractic philosophy;

(H) risk management;

(I) hygiene and sanitation;

(J) jurisprudence;

(K) nutrition;

(L) adjunctive or supportive therapy;

(M) sexual boundary issues;

(N) insurance and inter-professional communication;

(O) chiropractic research;

(P) communicable disease;

(Q) acupuncture and other non-incisive techniques;

(R) professional ethics;

(S) recordkeeping, documentation, and coding, or

(T) patient referral considerations.

(k) The Board may not approve or accept credit for any course on practice management.

(l) A sponsor of an approved course shall notify the Board in writing before any change in course location, date, or cancellation.

(m) A sponsor shall submit a roster of course participants that contains each participant's name and Board license number, course number, and number of hours earned by each participant not later than 30 days after the course.

(n) A sponsor shall provide each participant an attendance certificate with the sponsor's name, the participant's name, the course number, title, date, and location, the amount and type of credit earned, and signature of the sponsor's representative.

(o) A sponsor may not give a course participant full credit for attendance if the participant is absent more than 10 minutes during any one hour period.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204398
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

CHAPTER 75. BUSINESS PRACTICES

22 TAC §75.6

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §75.6 (Mandatory Notice to the Public). The Board will propose a new §75.6 in a separate rulemaking.

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

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to clarify language relating to permissible fees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §75.6. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

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

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701-1319, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

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

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

§75.6. Mandatory Notice to the Public.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204404
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

22 TAC §75.6

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §75.6 (Mandatory Notice to Public). The current §75.6 is being repealed in a separate rulemaking action.

The proposed rule simply updates the Board's address and contact information on the mandatory notice to the public placard contained in the attached graphic that licensees are required to display.

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

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to update the Board's address and contact information on the mandatory notice to the public placard that licensees are required to display.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §75.6. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

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

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

§75.6. Mandatory Notice to Public.

(a) A licensee shall ensure the figure in subsection (c) of this section is prominently displayed to the public at every location where the licensee provides chiropractic services.

(b) A licensee who provides services at any secondary location shall ensure the notice is visible to the public.

(c) A licensee who provides chiropractic telehealth services shall make the notice available to a patient during every telehealth session.

Figure: 22 TAC §75.6(c)

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204406
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

22 TAC §75.11

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §75.11 (Appointment Cancellation or No-Show Fees). Under the Board's statutes in Occupations Code Chapter 201, there is currently nothing to prevent a licensee from charging a patient a cancellation or no-show fee for a patient's failure to attend a scheduled appointment with the licensee. It is a permissible practice. However, the Board nonetheless continually receives questions on this topic from its licensees looking for guidance. Instead of answering licensees' questions one-by-one, the Board believes a rule containing its guidance on the topic would be beneficial to both licensees and patients.

The proposed rule states that charging cancellation or no-show fees to patients is a permissible practice, as long as the fee is reasonable and patients are notified of the licensee's fee policies in advance and in writing. The proposed rule also restates current law that cancellation or no-show fees are an administrative fee and not to be attributed to actual chiropractic services rendered

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

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to alert licensees and patients that reasonable cancellation or no-show fees are permissible under current law.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §75.10. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal rule does not repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701-1319, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

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

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

§75.11. Appointment Cancellation or No-Show Fees.

(a) A licensee or other person may charge a reasonable fee to a patient for the patient's failure to reasonably cancel a scheduled appointment.

(b) A licensee or other person may charge a reasonable fee to a patient for the patient's failure to show up at a scheduled appointment.

(c) If a licensee or other person charges a fee under this section, a licensee or other person shall provide to any new patient written notice of the licensee's or other person's exact fees, conditions, and policies under subsections (a) and (b) of this section before scheduling a subsequent appointment for that patient.

(d) A licensee or other person may not use a fee charged to a patient under this section as the basis for any claim or billing for chiropractic services rendered.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204394

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

CHAPTER 76. PATIENT RECORDS AND DOCUMENTATION

22 TAC §76.3

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §76.3 (Fees for Providing Patient Records). The Board will propose a new §76.3 in a separate rulemaking. This rulemaking action will clarify language relating to permissible fees.

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

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to clarify language relating to permissible fees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §76.3. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

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

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701-1319, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

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

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

§76.3. Fees for Providing Patient Records.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204399
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

22 TAC §76.3

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §76.3 (Fees for Providing Patient Records). The current §76.3 is being repealed in a separate rulemaking action.

The proposed rule does not substantively change the current one. Licensees informed the Board that they were confused as to the clear meaning of subsections (a) through (d) relating to the minimum fee a licensee could charge (and additional fees for additional pages) for providing patient records. The Board agreed the language could be improved. The Board trusts the new language is more precise as to the amount of permissible administrative fees a licensee can charge a patient for records.

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

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to more precisely state the amount of permissible administrative fees a licensee can charge a patient for records.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §76.3. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

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

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

§76.3. Fees for Providing Patient Records.

(a) A licensee or other person may charge a reasonable administrative fee not to exceed $50 for providing routine patient records in a digital-only format.

(b) A licensee or other person may charge a reasonable administrative fee not to exceed $25 for the first page of paper-only copies of routine patient records, plus $0.25 per additional page.

(c) A licensee or other person may charge a reasonable administrative fee not to exceed $50 for the first page of non-digital copies of routine films or other static diagnostic imaging studies, plus $1.00 per additional page.

(d) A licensee or other person may charge an additional reasonable administrative fee for providing patient records under subsection (a) of this section if:

(1) the digital records are voluminous and not routine; and

(2) the licensee or other person provides a written explanation of the need for the fee.

(e) A licensee or other person may charge a separate fee for the actual costs of mailing, shipping, notarizing documents, or delivery of patient records.

(f) A licensee or other person shall notify the requestor of patient records of any fee within five business days of receipt of the request.

(g) If a licensee or other person does not receive the fee within ten business days after the requestor was notified of the fee, the licensee or other person shall notify the requestor of the need for payment.

(h) A licensee or other person may demand advance payment for patient records except from another health care provider if the request was made because of emergency or acute medical situation.

(i) A licensee or other person may charge a reasonable fee not to exceed $25 for completing a custodian of records affidavit for patient records.

(j) A licensee or other person may charge a reasonable fee in advance to answer a deposition by written question.

(k) A licensee or other person may not charge for providing patient records where prohibited by Texas Health and Safety Code Chapter 161 or any other applicable state or federal law.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204401
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.1

The Texas Optometry Board proposes amendments to 22 TAC Chapter 277.1 - Complaint Procedures.

The rules in the Chapter 277 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 277. The Board has also determined that changes to Rule 277.1 as currently in effect are necessary.

A substantive change to the rule involves the addition of complaints related to the treatment of glaucoma to the high priority classification. Investigation of glaucoma complaints is authorized under SB 993 87R. In May 2022 (47 TexReg 3139), Rules §277.13 and §277.14 were adopted to outline the investigation of glaucoma complaints. This amendment reinforces that process as a high-priority for the Board.

Additionally, the amendment adds that during an investigation the Board shall consider Rules §279.1 - Contact Lens Examination and §279.3 - Spectacle Examination when determining basic competency. It goes on to clarify that if the optometrist or therapeutic optometrist fails to complete all the of required findings in an initial examination at which a prescription for corrective lenses is written, the completed report of investigation shall will be classified as a an complaint

Other clarifying amendments include: 1. To outline the purpose of the rule, 2. To clarify complaints that must be received on the Board's official complaint form and information that must be in-

cluded in a complaint - adding a provision to specify if the service was related to an in-person or telehealth visit, 3. To clarify how jurisdictional complaints are handled by Board staff, 4. To clarify the creation the Investigation-Enforcement Committee including deleting the geographic regions, 5. To clarify the duties of the Investigation-Enforcement Committee on determining whether or not a violation has occurred, and 6. To make non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is clarification of the complaint process which allows both the licensee and the public to know the Board handles all complaint cases in an impartial manner.

Legal counsel for the Board has reviewed the amended rule and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES: There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT: The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

GOVERNMENT GROWTH IMPACT STATEMENT: During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position.

PUBLIC COMMENTS: Comments on the amended rule may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

Amendments to 277.1 - Complaint Procedures are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code, Subchapter E. Public Interest Information and Complaint Procedures. No other sections are affected by the amendments.

§277.1 Complaint Procedures

(a) Purpose. Pursuant to §351.205 of the Act, the Board is authorized to adopt rules relating to the investigation of complaints filed with the Board.

(b) [~~(a)~~] Complaints. Complaints shall be submitted on the official complaint form. The Board shall protect the identity of a complainant in the investigative process to the extent possible. [~~Filing complaints. Complaints may be filed in writing with the agency, either in person at the board's office, or by mail. The board shall adopt a form as its official complaint form which shall be maintained at the board's office for use at the request of any complainant. Complaints are privileged and confidential. At a minimum, all complaints shall contain information necessary for the proper processing of the complaint by the board, including, but not limited to:~~] Complaints shall contain the following information:

(1) the name and contact information of the complainant (and patient); [~~complainant's name, address, and phone number. The board cannot accept an anonymous complaint. The board shall protect the identity of a complainant in the investigative process to the extent possible. If the complainant is an insurance agent, insurer, pharmaceutical company, or third-party administrator, the board will notify the respondent within 15 days of the name and address of the complainant;~~]

(2) the name and contact information of the person the complaint is filed against [~~name, address, and phone number of the optometrist, therapeutic optometrist, or other person, firm, or corporation, if known;~~]

(3) the date, time, and place of occurrence of alleged violation of the Act or Board rules;

(4) the type of service (in-person or telehealth);

(5) [~~(4)~~] the complete description of incident giving rise to the complaint; and

(6) [~~(5)~~] the express authorization to release patient records to the Board where applicable.

(c) [~~(b)~~] Classification of Complaints. All complaints received shall be sent to the Executive Director [~~executive director~~]. The Board [~~board~~] shall determine jurisdiction and distinguish between categories of complaints as follows:

(1) Non-jurisdictional [~~non jurisdictional~~]. A complaint is non-jurisdictional if the Board does not have any authority over the subject of the complaint. If possible, these complaints shall be referred to an agency having jurisdiction over the complaint.

(2) Jurisdictional. [~~jurisdictional~~], A complaint is jurisdictional if it alleges conduct by a Board licensee that, if true, would constitute a violation of the Act or Board rules. A jurisdictional complaint may require a Board investigation including but not limited to a Board member expert review and/or contractual third-party expert review [~~requiring expertise of a licensee board member to resolve~~]. The Board shall further classify these complaints according to the schedule in subsection (d) [~~(c)~~] of this section. These complaints shall be processed according to subsection (e) [~~(d)~~] of this section.

[~~(3) jurisdictional, concerning matters other than those requiring professional expertise of a licensee board member. The Board shall further classify these complaints according to the schedule in subsection (c) of this section. These complaints may be processed according to subsection (c) of this section.~~]

(d) [~~(c)~~] Classification of Jurisdictional Complaints. All jurisdictional complaints shall be classified in one of the following categories:

(1) Complaints of high priority. This includes, but is not limited to, complaints alleging:

(A) professional misconduct,

(B) qualifications of applicants or licensees,

(C) unauthorized practice;

(D) complaints related to the treatment of glaucoma;

(E) [~~(D)~~] other acts or the failure to act that potentially threatens the public health, and

(F) [~~(E)~~] a violation of the professional standard of care. The processing of these complaints shall have priority over normal priority complaints. The Board shall evaluate complaints of high priority to determine whether an emergency temporary suspension shall be sought under §277.8 of this title [~~(Rule 279.8)~~].

(2) Complaints of normal priority. This includes, but is not limited to, complaints alleging:

(A) advertising violations,

(B) violations of the Act or Board Rules resulting in economic harm, and

(C) violations of the Act regarding notice that do no potentially threaten the public health.

(e) [~~(d)~~] Investigation-Enforcement Committee.

(1) Makeup of Committee. The Chair [~~chair~~] shall appoint a committee to consider all jurisdictional complaints [~~classified under subsection (b)(2) of this title and complaints~~] referred from Board staff. The committee shall be known as the Investigation-Enforcement Committee [~~investigation-enforcement committee~~] and shall be composed of board members who are licensed optometrists or therapeutic optometrists. [~~The executive director shall divide the state into geographic areas, with each member of the investigation-enforcement committee being assigned areas of responsibility within such geographic areas. Two members shall be charged with the responsibility of enforcing the provisions of the Act within the assigned area and are authorized to initiate investigations. The executive director shall supervise all investigations. If, as a result of an investigation within a geographic area, including an inspection of a facility or record, a complaint is filed against a licensed optometrist, therapeutic optometrist, or other person, firm, or corporation by the investigator, the members charged with that area shall assist in the handling of the prosecution of such complaint and disciplinary proceeding, if any.~~]

(2) Authority of Committee. [~~The executive director shall forward a complaint classified under subsection (b)(2) above to the committee members assigned to the area of the complaint unless in the judgment of the executive director, unusual circumstances exist such that it is more appropriate that the complaint be under province of another member.~~] The Committee [~~investigation-enforcement committee, or any member thereof,~~] shall have the power to make recommendations regarding resolution and disposition of specific cases such as those regarding professional competency or recommendations regarding dismissals of complaints and closure or investigations. The Committee may issue subpoenas and subpoenas duces [~~deuces~~] tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction. In addition to subpoena power, each member of the committee may authorize the Executive Director [~~executive director~~] to investigate an alleged violation.

(3) Disposition of Complaint. During the investigation of a filed jurisdictional complaint related to professional competency, members of the Committee may determine [~~On receipt of the complaint, the members shall determine:~~]

(A) whether a violation of the Act or Board rules has occurred;

(B) [~~(A)~~] whether to dismiss the matter and take no further action

[~~(B) whether to send a letter to the person charged reciting that a complaint has been received and that while the investigating member cannot determine or pass upon the merits of the complaint without conducting further investigation that the subject of the complaint be asked to review the complaint to ensure that the Act is being complied with, and that if the allegations are true, to cease and desist from the alleged violations or words to that effect;~~]

(C) whether to conduct further investigations[~~, including conducting investigational hearings or informal conferences~~];

(D) whether to forward to the Board [~~board~~] the Committee's [~~members'~~] determination that a violation of the Act may have occurred together with a recommendation that the Board issue a remedial plan;

(E) whether to forward to the Board [~~board~~] the Committee's [~~members'~~] determination that a violation of the Act may have occurred together with a recommendation that proceedings be instituted with the State Office of Administrative Hearings to consider disciplinary action, sanctions, administrative penalties, issuance of cease and desist orders, or refusal to issue a license;

(F) whether to forward to the Board [~~board~~] the Committee's [~~members'~~] determination that some person, firm, or corporation may be practicing optometry without a license or otherwise violating the provisions of the Act, along with the members' recommendation that the board notify the attorney general or appropriate district attorney with accompanying request that appropriate action be taken in accordance with law; and

(G) whether to forward to the Executive Director [~~executive director~~] the Committee's [~~members'~~] determination of findings applicable to subparagraphs (D) and (E) of this paragraph to issue a remedial plan or for assessment of administrative penalties.

[~~(H) Should the members of the committee disagree on the disposition of the complaint, the members shall schedule an informal conference.~~]

(f) [~~(e)~~] Complaints Investigated by Staff. Board staff may investigate jurisdictional complaints that do not directly relate to patient care and the investigation or disposition of which do not require expertise in optometry or therapeutic optometry. During the [~~The~~] investigation, Board staff may consult [~~employ~~] members of the Investigation-Enforcement Committee to assist with the investigation [~~as authorized by subsection (d)(2)~~]. A complaint shall be directed to the Investigation-Enforcement Committee if the Executive Director [~~executive director~~] determines that the complaint should not be dismissed or settled or the Executive Director [~~executive director~~] is unable to reach an agreed settlement.

(g) [~~(f)~~] Notification and Request for Information. Once an investigation commences, Board staff shall notify the subject of the complaint and request a written response to the allegations along with patient charts and any other relevant information. [~~The committee or board staff may request that the subject of a complaint respond in writing to the allegations in the compliant.~~] The subject of the complaint shall have 14 days from the receipt of the Board's request to respond

pursuant to §273.16 of this title. The Executive Director [~~executive director~~] may extend the time period upon a showing of good cause by the subject of the complaint.

(h) [~~(g)~~] Dismissal and Tracking of Complaints. A complaint shall not be dismissed without appropriate consideration. The Board board and complainant shall be advised of complaint dismissals. A complaint dismissed by the Executive Director [~~executive director~~] shall be approved by the Board at a Board Meeting. The Executive Director [~~executive director~~] shall make a report at each board meeting regarding complaints to the Board.

(i) [~~(h)~~] Basic Competence Violations.

(1) If during the investigation of an optometrist's or therapeutic optometrist's compliance with Section 351.353 of the Act and §279.1 or §279.3 [~~§279.7~~] of this title, the optometrist or therapeutic optometrist failed [~~fails~~] to complete all the of required findings in an initial examination at which a prescription for corrective lenses is written, the completed investigation report [~~of investigation~~] will be classified as a [~~an~~] complaint and forwarded by the Executive Director [~~executive director~~] to the Investigation-Enforcement Committee [~~committee members~~].

(2) In determining the action to take under subsection (e)(3) [~~(d)(3)~~], if any, the Investigation-Enforcement Committee [~~committee members~~] shall consider the seriousness of the omitted finding, the compliance history of the optometrist or therapeutic optometrist, and prior actions of the Board [~~board~~] concerning similar complaints. Omission of four or more basic competency findings requires the committee members to conduct an informal conference.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204417
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-8500

♦ ♦ ♦

22 TAC §277.2

The Texas Optometry Board proposes amendments to 22 TAC Chapter 277, §277.2 - Disciplinary Proceedings.

The rules in the Chapter 277 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 277. The Board has also determined that changes to Rule 277.2 as currently in effect are necessary.

The amendment outlines the specific language that must be included on the notice when entering a default judgment under the rule "FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT."

The amendment also makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is clarification of the disciplinary process which allows both the licensee and the public to know what happens when a licensee fails to respond to a notice of violation.

Legal counsel for the Board has reviewed the amended rule and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES: There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT: The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

GOVERNMENT GROWTH IMPACT STATEMENT: During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position.

PUBLIC COMMENTS: Comments on the amended rule may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

Amendments to 277.2 - Disciplinary Proceedings are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code, Subchapter K. Disciplinary Procedures.

No other sections are affected by the amendments.

§277.2 Disciplinary Proceedings.

(a) General statement. In a contested case before the Board [~~board~~], proceedings shall be governed by the Administrative Procedure Act (APA), except as specifically provided in the Optometry Act. In any contested case, opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved. Un-

less precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, refund of examination fees, remedial plan or dismissal.

(b) Informal disposition of contested case. Prior to the imposition of disciplinary sanctions, remedial plan, or administrative penalties against a respondent (a licensee or a person issued a cease and desist order), the respondent shall be offered an opportunity to attend an informal conference and show compliance with all requirements of law, in accordance with the APA.

(1) Informal conferences shall be attended by the Executive Director [~~executive director~~], the Board's board's legal counsel, the two members of the Investigation-Enforcement Committee, a public member, and other representatives of the Board [~~board~~] as the Executive Director [~~executive director~~] and legal counsel may deem necessary for the proper conduct of the conference. The respondent and/or the authorized representative may attend the informal conference and shall be provided an opportunity to be heard.

(2) In any case where charges are based upon information provided by a person who filed a complaint with the Board [~~board~~] (complainant), the complainant may attend the informal conference, and shall be provided with an opportunity to be heard. Nothing herein requires a complainant to attend an informal conference.

(3) Notice of the informal conference shall include:

(A) a statement of the legal authority, jurisdiction, and alleged conduct under which the enforcement action is based, with a reference to the particular section(s) of the statutes and rules involved;

(B) an offer for the respondent to attend an informal conference at a specified time and place and show compliance with all requirements of law, in accordance with Chapter 2001 of the Administrative Procedure Act;

(C) a statement that the respondent has an opportunity for a hearing before the State Office of Administrative Hearings on the allegations; and

(D) the following statement in capital letters in 12 point boldface type: FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT. The notice shall be served by delivering a copy to the respondent or licensee in person, by courier receipted delivery, or by certified or registered mail, return receipt requested, to the licensee's last known address of record as shown by agency records, not less than 10 days prior to the date of the conference.

(4) The respondent shall respond by either personal appearance at the informal conference or in writing no later than the date of the informal conference. If the respondent chooses to respond in writing, the response shall admit or deny each of the allegations. If the respondent intends to deny only a part of an allegation, the respondent shall specify so much of it is true and shall deny only the remainder. The response shall also include any other matter, whether of law or fact, upon which the respondent intends to rely for his or her defense. If the respondent fails to respond to the notice specified in this subsection, the matter will be considered as a default case and the respondent will be deemed to have:

(A) admitted all the factual allegations in the notice specified in this subsection;

(B) waived the opportunity to show compliance with the law;

(C) waived notice of a hearing;

(D) waived the opportunity for a hearing on the allegations; and

(E) waived objection to the recommended sanctions made at the informal conference.

(5) The Investigation-Enforcement Committee may recommend that the Board [~~board~~] enter a default order, based upon the allegations set out in the notice specified in this subsection, adopting the recommended sanctions made at the informal conference. Upon consideration of the case, the Board may enter a default order under §2001.056 of the Administrative Procedure Act or direct that the case be set for a hearing at the State Office of Administrative Hearings.

(6) Any default judgment granted under this section will be entered on the basis of the factual allegations in the notice and upon proof of proper notice to the respondent's address of record as specified in paragraph (3) of this subsection.

(7) A motion for rehearing which requests that the Board vacate its default order under this section shall be granted if the motion presents convincing evidence that the failure to respond to the notice specified in this subsection was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the respondent has a meritorious defense to the factual allegations contained in the notice specified in this subsection and the granting thereof will not result in delay or injury to the public or the Board.

(8) Informal conferences shall not be deemed to be meetings of the Board [~~board~~] and no formal record of the proceedings at the conferences shall be made or maintained.

(9) The Investigation-Enforcement Committee shall consider the Penalty Schedule in §277.6 of this title [~~(Rule 277.6)~~] to determine the parameters of any administrative fine or penalty to recommend to the respondent and the Board. The Investigation-Enforcement Committee may recommend a settlement to the respondent that includes an agreed order to refund all or part of the examination fee paid by the complainant to the respondent. This settlement must be approved by the Board pursuant to subsection (b)(10).

(10) Any proposed order shall be presented to the Board [~~board~~] for its review. At the conclusion of its review, the Board [~~board~~] shall approve, amend, or disapprove the proposed order. Should the Board [~~board~~] approve the proposed order, the appropriate notation shall be made in the minutes of the Board [~~board~~] and the proposed order shall be entered as an official action of the Board [~~board~~]. Should the Board [~~board~~] amend the proposed order, the Executive Director [~~executive director~~] shall contact the respondent to seek concurrence. If the respondent does not concur, the provisions of the next sentence shall apply. Should the Board [~~board~~] disapprove the proposed order, the case shall be rescheduled for purposes of reaching an agreed order or in the alternative forwarded to the State Office of Administrative Hearings for formal action.

(c) Formal disposition of a contested case. All contested cases not resolved by informal conference shall be referred to the State Office of Administrative Hearings.

(1) Notice. The respondent shall be entitled to reasonable notice of not less than 10 days. Notice shall include the matters specifically required by the APA, to wit:

(A) a statement of the time, place, and nature of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is being held;

(C) a reference to the particular section of the Act and rules involved; and

(D) a short and plain statement of the matters asserted.

(2) Service of notice. The notice of hearing and a copy of the formal complaint shall be served on the respondent's last known address at least 10 days prior to the hearing. Service on the respondent shall be complete and effective if the document to be served is sent by registered or certified mail to the respondent at the address shown on the respondent's annual renewal certificate.

(3) Filing of documents. All pleadings and motions relating to any contested case pending before the State Office of Administrative Hearings shall be filed with the State Office of Administrative Hearings. They shall be deemed filed only when actually received.

(4) Motion for continuance. Continuances may be granted by the State Office of Administrative Hearings in accordance with procedural rules established by that agency.

(5) Transcription. Proceedings, or any part of them, must be transcribed on the written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties.

(6) Discovery. Requests for the issuance of subpoenas, requests for depositions and for production of documents, and other discovery matters shall be governed by the APA.

(d) If, after receiving notice of hearing, a party fails to appear in person or by representative on the day and time set for hearing, the Administrative Law Judge may proceed in that party's absence and, as authorized by applicable law, may issue a proposal for decision or order against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

(e) Any default judgment entered under this section shall be issued only upon adequate proof that proper notice was provided to the defaulting party, and such notice includes disclosure, in 12 point, bold-faced type: FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT.[~~, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.~~] Proper notice may be established by proof that the Board complied with subsection [~~subsections~~] (c)(1) and (2) of this section.

(f) This section does not preclude the agency from informally disposing of a case by default under the agency's statute or rules in the event the respondent fails to file a timely written response or other responsive pleading required by the agency's statute or rules.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204418

Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-8500

♦ ♦ ♦

22 TAC §§277.3 - 277.6, 277.10 - 277.12

The Texas Optometry Board proposes amendments to 22 TAC Chapter 277, Practice and Procedure.

The rules in the Chapter 277 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 277. The Board has also determined that changes to certain rules as currently in effect are necessary. The specific rules being amended include: 277.3 - Probation, 277.4 - Reinstatement, 277.5 - Convictions, 277.6 - Administrative Fines and Penalties, 277.10 - Remedial Plans, 277.11 - Submission to Mental or Physical Examination, and 277.12 - Denial of License and Disciplinary Action by Board.

The amendments outlined in this proposal are non-substantive in that they primarily change capitalization in order for the language across the entirety of Chapter 277 to be consistent. The amendments include changing all references from "board" to "Board" and from "executive director" to "Executive Director."

Additionally, in Rule 277.12 - Denial of License and Disciplinary Action by Board the amendment adds "or therapeutic optometry" in subsection (a)(1) when describing the "practice of optometry." This amendment is consistent across the Chapter in that references to the "practice of' use both "optometry" and "therapeutic optometry."

Other non-substantive amendments: Rule 277.10 - Remedial Plans subsection (d) the word "the" is added to provide clarity and in Rule 277.11 - Submission to Mental or Physical Examination subsection (d), an extra word (in) is deleted.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rules are in effect, there will not be fiscal implications for state and local governments as a result of amending these existing rules.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendments are in effect, the public benefit is consistency of language across the agency's rules.

Legal counsel for the Board has reviewed the amended rules and has found them to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES: There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendments. Since the agency has determined that the amendments to the 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, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT: The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendments do 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.

GOVERNMENT GROWTH IMPACT STATEMENT: During the first five years that the amended rules will be in effect, it is anticipated that the amendments will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rules will not require the creation of a new employee position or the elimination of an existing employee position.

PUBLIC COMMENTS: Comments on the amended rules may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

Amendments to §277.3 - Probation, §277.4 - Reinstatement §277.5 - Convictions, §277.6 - Administrative Fines and Penalties, §277.10 - Remedial Plans, §277.11 - Submission to Mental or Physical Examination, and §277.12 - Denial of License and Disciplinary Action by Board are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151. No other sections are affected by the amendments.

§277.3 Probation

(a) The Board [~~board~~] shall have the right and may upon majority vote rule that an order denying an application for license or any order canceling, suspending, or revoking any license be probated so long as the probated practitioner conforms to such orders and rules as the Board [~~board~~] may set out in the terms of the probation. The Board [~~board~~], at the time of its decision to probate the practitioner, shall set out the period of time which shall constitute the probationary period; provided, however, that the Board [~~board~~] may at any time while the practitioner remains on probation upon majority vote rescind the probation and enforce the Board's [~~board's~~] original action denying, suspending, or revoking such license for violation of the terms of the probation or for other good cause as the Board [~~board~~] in its discretion may determine. To rescind the probation shall require a formal disciplinary hearing and be conducted as a contested case within the meaning of the APA.

(b) The Executive Director [~~executive director~~] shall maintain a chronological and alphabetical listing of licensees who have had their license canceled, suspended, or revoked, and shall monitor each consent order in respect to each license holder's specific sanction. Any noncompliance observed as a result of monitoring shall be referred to the Board [~~board~~].

§277.4 Reinstatement

Any practitioner whose license to practice has been revoked for a period of more than one year may, after the expiration of at least one year from the date that such revocation became final, apply to the Board [~~board~~], on forms provided by the Board [~~board~~], to have the revocation order withdrawn and to have the Board [~~board~~] reinstate a license to practice optometry or therapeutic optometry. In considering the reinstatement of a revoked license, the State Office of Administrative Hearings shall consider all factors it deems relevant, and the applicant for reinstatement of a revoked license must appear before the State Office of Administrative Hearings. After consideration of the proposal for decision, the Board [~~board~~] in its discretion may:

(1) deny reinstatement of a revoked license;

(2) reinstate a revoked license and probate the practitioner for a specified period of time under specified conditions; or

(3) authorize reinstatement of the revoked license.

§277.5 Convictions

(a) The Act, §351.501(a)(3), and Texas Occupations Code Chapter 53, provide that the Board [~~board~~] may suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor, including being placed on deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt, or revocation of parole, probation or court ordered supervision, if the crime directly relates to duties and responsibilities of a licensed optometrist or therapeutic optometrist.

(b) A licensee or applicant receiving a felony or misdemeanor criminal conviction, including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt, or revocation of parole, probation or court ordered supervision, shall report the order of conviction, deferred adjudication or court ordered community or mandatory supervision, or revocation of parole, probation, or supervision within 30 days of the date the court issued the order. This subsection does not require the reporting of a Class C Misdemeanor traffic violation. The failure of a licensee or applicant to report a conviction is deceit, dishonesty and misrepresentation in the practice of optometry and authorizes the Board [~~board~~] to take disciplinary action under §351.501 of the Act. The licensee shall furnish any document relating to the conviction as requested by the Board.

(c) The Texas Optometry Act authorizes licensees to provide health services.

(d) A person currently incarcerated because of a felony conviction or revocation of parole, probation or court ordered supervision in a felony case may not sit for examination, obtain a license under this act, or renew a previously issued license to practice optometry or therapeutic optometry.

(e) In considering whether a criminal conviction directly relates to the occupation of an optometrist or therapeutic optometrist, the Board shall consider the factors listed in Texas Occupations Code §53.022.

(f) The practice of optometry and therapeutic optometry places the optometrist or therapeutic optometrist in a position of public trust. A licensee practices in an autonomous role in treating patients young and old; in prescribing, administering and safely storing dangerous drugs including controlled substances; in preparing and safeguarding confidential records and information; and in accepting client funds. Therefore the crimes considered by the Board to relate to the practice of optometry and therapeutic optometry include, but are not limited to:

(1) any felony or misdemeanor of which fraud, dishonesty or deceit is an essential element;

(2) any criminal violation of the Optometry Act, or other statutes regulating or pertaining to the practice or profession of optometry and therapeutic optometry;

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) any crime involving moral turpitude;

(5) murder;

(6) burglary;

(7) robbery;

(8) theft;

(9) sex offense;

(10) perjury;

(11) child molesting; and

(12) substance abuse or substance diversion.

(g) In determining the present fitness of a person who has been convicted of a crime, the Board shall consider the factors listed in Texas Occupations Code §53.023.

(h) It shall be the responsibility of the applicant for license to secure and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities regarding all offenses.

(i) The applicant for license shall also furnish proof in such form as may be required by the Board, that the licensee maintained a record of steady employment and has supported licensee dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which the licensee has been convicted.

(j) Upon suspension or revocation of a license, or denial of an application for license or examination because of the person's prior conviction of a crime and the relationship of the crime to the license, the Board shall notify the person in writing:

(1) of the reasons for the suspension, revocation, denial, or disqualification;

(2) of the review procedure provided by Texas Occupations Code §53.052; and

(3) of the earliest date that the person may appeal.

(k) The Board [~~board~~], however, shall be under no duty to generate evidence with respect to the matters listed in Texas Occupations Code Chapter 53.

§277.6 Administrative Fines and Penalties

(a) Based upon the criteria in this section, and in addition to the sanctions listed in subsection (e) of this section, the guideline administrative penalty or fine amount for:

(1) felony conviction: $2,000 minimum penalty for each offense (§351.501(a)(3) of the Act)

(2) misdemeanor conviction involving moral turpitude: $2,000 minimum penalty for each offense (§351.501(a)(3) of the Act)

(3) impaired ability to practice: $2,000 minimum penalty for each offense (§351.501(a)(4) of the Act)

(4) violations of the act or rules involving controlled substances: $2,000 minimum penalty for each offense (§§351.501(a)(4) and (15), 351.358, 351.451, and 351.452 of the Act)

(5) fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or in applying for license; or deceiving, defrauding, or harming the public: $2,000 minimum penalty for each offense (§351.501(a)(4) and (11) of the Act)

(6) gross incompetence in the practice of optometry or engaging in a pattern of practice or other behavior demonstrating a wilful provision of substandard care: $2,000 minimum penalty for each offense (§351.501(a)(12) and (13) of the Act)

(7) practicing or attempting to practice optometry while the license is suspended or violating the terms of a Board Order: $2,000 minimum penalty for each offense (§351.501(a)(8) and (17) of the Act)

(8) having the right to practice optometry suspended or revoked by a federal agency: $2,000 minimum penalty for each offense (§351.501(a)(10) of the Act)

(9) the guideline administrative penalty or fine amount for the following violations is a $300 minimum penalty for the first offense and $600 minimum penalty for the second offense and subsequent:

(A) Failure to report address changes to the Board as required by §351.351 and §351.501(16) of the Act.

(B) Failure to properly display name visible to the public as required by §351.362 of the Act.

(C) Failure to display public interest information as required by §351.203 of the Act, and §273.9 of this title.

(D) Failure to properly release contact lens prescription as required by §353.156 of the Contact Lens Prescription Act,

(E) Advertising violations, including misleading advertising as prohibited by §351.155 and §351.403 of the Act, and §279.9 of this title.

(F) Failure to use proper professional identification as required by §104.003 of the Texas Occupations Code.

(G) Offering glasses or contact lenses as a prize or inducement as prohibited by §351.404 of the Act and §273.3 of this title.

(H) Failure of the subject of a complaint to respond within 14 days of receipt to a request letter from the Board regarding the complaint as required by §277.1 of this title.

(10) the guideline administrative penalty or fine amount for the following violations is a $1,500 minimum and $2,500 maximum penalty:

(A) Directing or allowing optical employees or owners to make appointments for a leasing licensee as prohibited by §351.408 and §351.459 of the Act.

(B) Directing or allowing optical employees or owners to advertise for a leasing licensee or include the licensee's office in the advertising as prohibited by §351.408 and §351.459 of the Act.

(C) Directing or allowing optical employees or owners to set the practice hours for a leasing licensee as prohibited by §351.408 of the Act.

(D) Practicing in an office not properly separated from a lessor optical as prohibited by §§351.363, 351.364, 351.408, and 351.459 of the Act, and §279.12 of this title.

(b) In accordance with §351.551 of the Act, administrative penalties may be assessed for violations of the Act or rule or order of the Board [~~board~~]. Either the Executive Director [~~executive director~~] or a subcommittee of the Board [~~board~~], to include at least one public member of the Board [~~board~~], may assess a penalty for each violation and present a report to the Board [~~board~~] concerning the facts on which the determination was based and the amount of penalty.

(c) In accordance with §351.507 of the Act, the Investigation - Enforcement Committee shall use the guidelines in this rule when determining the appropriate administrative penalty or fine to recommend to the Board [~~board~~].

(d) The guidelines in this rule are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements. The guidelines in this rule apply to a single violation where there are no aggravating or mitigating factors. Multiple violations and aggravating or mitigating factors as listed in subsection (f) of this section may justify a modification of the guideline amount. The guideline amount may be reduced when a respondent acknowledges a violation and agrees to comply with terms and conditions of an agreed order.

(e) The guidelines in this rule apply to administrative penalties and fines. The Board may also, alone or in conjunction with imposing an administrative penalty or fine, refuse to issue a license to an applicant, revoke or suspend a license, place on probation a person whose license has been suspended, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a licensee.

(f) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including nature, circumstances, extent, and gravity of any prohibited act, and hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(g) Penalties imposed by the Board [~~board~~] pursuant to subsections (a) - (f) of this section may be imposed for each violation subject to the following limitations:

(1) imposition of an administrative penalty not to exceed $2,500 for each violation;

(2) each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(h) Administrative penalties or fines for violations not specifically mentioned in this rule shall be based on an amount that corresponds to the scheme of the guidelines of this rule.

(i) The provisions of this rule shall not be construed so as to prohibit other appropriate disciplinary action under the Act, civil or criminal action and remedy and enforcement under other laws.

§277.10 Remedial Plans

(a) Section 351.509 authorizes the Board to issue a remedial plan to resolve the investigation of a complaint.

(b) The issuance of a remedial plan does not impose disciplinary action. Records of the remedial plan will be removed from the records of the Board on the date two years after the date that a licensee successfully completes a remedial plan.

(c) A remedial plan may not:

(1) revoke, suspend, limit, or restrict a license or assess an administrative penalty;

(2) be imposed to resolve a complaint concerning a death, hospitalization, or the commission of a felony; and

(3) be imposed if the Board [~~board~~] issued a remedial plan to a licensee within the preceding 24 months.

(d) A remedial plan must be approved by the Board. The plan may be initiated in the following manner:

(1) for violations listed in §277.6(a)(9) of this title, by the Executive Director [~~executive director~~] in the same manner as administrative penalties are assessed by the Executive Director [~~executive director~~] in §277.1 of this title; or

(2) by the Investigation-Enforcement Committee in the same manner as the disposition of complaints in §277.1 of this title.

(e) If a licensee does not accept an offer of settlement based on the issuance of a remedial plan, the Board shall schedule an informal settlement conference according to the provisions of §277.2 of this title.

(f) If a licensee does not successfully complete the terms of a remedial plan, the Board may reopen the investigation of the complaint to determine if disciplinary action should be imposed.

(g) The Board [~~board~~] may assess a plan administration fee in an amount of $1,000, to recover the costs of administering the plan.

§277.11 Submission to Mental or Physical Examination

(a) If the Board [~~board~~] has probable cause to believe that a licensee/applicant has developed an incapacity that prevents or could prevent the applicant or license holder from practicing optometry or therapeutic optometry with reasonable skill, competence, and safety to the public (an incapacity), the Board [~~board~~] shall require the licensee/applicant to submit to a mental and/or physical examination by a physician or other healthcare professional designated by the Board [~~board~~]. Probable cause may include, but is not limited to, any one of the following:

(1) sworn statements from two people, willing to testify before the Board [~~board~~], that a certain licensee/applicant has developed an incapacity;

(2) a sworn statement from a representative of the Peer Assistance Program, stating that the representative is willing to testify before the Board [~~board~~] that a certain licensee/applicant has developed an incapacity;

(3) evidence that a licensee/applicant left a treatment program for alcohol or chemical dependency before a completion of that program;

(4) evidence that a licensee/applicant has engaged in the intemperate use of drugs or alcohol at a time and under circumstances that would lead a reasonable person to believe that the licensee/applicant has developed an incapacity;

(5) evidence of repeated arrests of a licensee/applicant for intoxication or drug use;

(6) evidence of recurring temporary commitments to a mental institution of a licensee/applicant;

(7) medical records showing that a licensee/applicant has an illness or condition that results in the inability to function properly in his or her practice; or

(8) actions or statements by a licensee/applicant at a hearing conducted by the Board [~~board~~] that gives the Board [~~board~~] reason to believe that the licensee has developed an incapacity.

(b) Upon presentation to the Executive Director of probable cause, the Board [~~board~~] authorizes the Executive Director to write the licensee/applicant requesting that the licensee/applicant submit to a physical or mental examination within 30 days of the receipt of the letter from the Executive Director. The letter shall state the reasons for the request for the mental or physical examination and the physician or other healthcare professional designated by the Executive Director

to conduct such examinations. The applicant/licensee shall authorize the release of the results of the examination to the Board [~~board~~] and the results shall be submitted to the Board [~~board~~] within 15 days of the date of the examination. The results of any Board [~~board~~] -ordered mental or physical examination are confidential.

(c) If the licensee/applicant to whom a letter requiring a mental or physical examination is sent refuses to submit to the examination, the Board [~~board~~], through its Executive Director, shall issue an order requiring the licensee/applicant to show cause why the licensee/applicant should not be required to submit to the examination and shall schedule a hearing on the order not later than 30 days after the date on which the notice of the hearing is provided to the licensee. The licensee/applicant shall be notified by either personal service or certified mail with return receipt requested.

(d) At the hearing provided in for in subsection (c) of this title, three members of the Board [~~board~~] appointed by the Chair [~~president~~] of the Board [~~board~~] shall determine whether the licensee/applicant shall submit to an evaluation or that the matter shall be closed with no examination required.

(1) At the hearing, the applicant/licensee has the burden of proof once probable cause has been established by the Board [~~board~~] to rebut the probable cause. The applicant/licensee and the licensee/applicant's attorney, if any, are entitled to present testimony and other evidence to show why probable cause has not been established requiring the applicant/licensee to submit to the examination. An applicant/licensee is entitled to cross-examine an expert who offers testimony at the hearing.

(2) If, after consideration of the evidence presented at the hearing, the panel determines that the licensee/applicant shall submit to an examination, the panel shall authorize the Executive Director to issue an order requiring the examination within 60 days after the date of the entry of the order requiring examination. The applicant/licensee shall authorize the release of the results of the examination to the Board [~~board~~], and the results shall be submitted to the board within 15 days of the date of the examination.

(3) If the panel determines that no such examination is necessary, the panel will withdraw the request for examination.

(e) The provisions of this rule shall not be construed so as to prohibit other appropriate disciplinary action under the Act, civil or criminal action and remedy and enforcement under other laws.

§277.12 Denial Of License And Disciplinary Action By Board

(a) Denial of License. The Board may refuse to issue a license to an applicant, if the Board determines that:

(1) the applicant is guilty of fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or therapeutic optometry or in seeking admission to that practice;

(2) the applicant is unfit or incompetent by reason of negligence;

(3) the applicant has been convicted of a misdemeanor involving moral turpitude or a felony;

(4) the applicant has developed an incapacity that prevents or could prevent the applicant from practicing optometry or therapeutic optometry with reasonable skill, competence, and safety to the public;

(5) the applicant has wilfully or repeatedly violated this chapter or a Board [~~board~~] rule adopted under this chapter;

(6) the applicant has acted to deceive, defraud, or harm the public;

(7) the applicant is guilty of gross incompetence in the practice of optometry or therapeutic optometry;

(8) the applicant has engaged in a pattern of practice or other behavior demonstrating a wilful provision of substandard care;

(9) the applicant has committed an act of sexual abuse, misconduct, or exploitation with a patient or has otherwise unethically or immorally abused the doctor-patient relationship;

(10) the applicant has prescribed, sold, administered, distributed, or given a drug legally classified as a controlled substance or as an addictive or dangerous drug for other than an accepted diagnostic or therapeutic purpose;

(11) the applicant has failed to report to the Board the relocation of the applicant's office not later than the 30th day after the date of relocation, whether in or out of this state;

(12) the applicant's violation of a law of this state, other than Texas Occupations Code Chapter 351, or a rule of another licensing board in this state, or of a statute or rule of another state if the violation constitutes a violation of the laws of this state or a Board [~~board~~] rule; or

(13) the applicant has violated the provisions of a disciplinary order or agreement issued by the Board.

(b) Disciplinary Action. The Board may revoke or suspend a license, place on probation a license holder whose license has been suspended, impose a fine, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a license holder if the Board determines that:

(1) the license holder is guilty of fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or therapeutic optometry or in seeking admission to that practice;

(2) the license holder is unfit or incompetent by reason of negligence;

(3) the license holder has been convicted of a misdemeanor involving moral turpitude or a felony;

(4) the license holder has developed an incapacity that prevents or could prevent the license holder from practicing optometry or therapeutic optometry with reasonable skill, competence, and safety to the public;

(5) the license holder has directly or indirectly employed, hired, procured, or induced a person to practice optometry or therapeutic optometry in this state without a license;

(6) the license holder has directly or indirectly aided or abetted an unlicensed person in the practice of optometry or therapeutic optometry;

(7) the license holder has placed the holder's license at the disposal or service of, including lending, leasing, or renting to, a person not licensed to practice optometry or therapeutic optometry in this state;

(8) the license holder has wilfully or repeatedly violated this chapter or a Board [~~board~~] rule adopted under this chapter;

(9) the license holder has wilfully or repeatedly represented to a member of the public that the license holder is authorized or competent to cure or treat an eye disease beyond the authorization granted by this chapter;

(10) the license holder has had the right to practice optometry or therapeutic optometry suspended or revoked by a federal agency for a cause that the Board [~~board~~] believes warrants that action;

(11) the license holder has acted to deceive, defraud, or harm the public;

(12) the license holder is guilty of gross incompetence in the practice of optometry or therapeutic optometry;

(13) the license holder has engaged in a pattern of practice or other behavior demonstrating a wilful provision of substandard care;

(14) the license holder has committed an act of sexual abuse, misconduct, or exploitation with a patient or has otherwise unethically or immorally abused the doctor-patient relationship;

(15) the license holder has prescribed, sold, administered, distributed, or given a drug legally classified as a controlled substance or as an addictive or dangerous drug for other than an accepted diagnostic or therapeutic purpose;

(16) the license holder has failed to report to the Board [~~board~~] the relocation of the applicant's or license holder's office not later than the 30th day after the date of relocation, whether in or out of this state;

(17) the license holder has practiced or attempted to practice optometry while the license holder's license was suspended;

(18) the applicant's violation of a law of this state, other than Texas Occupations Code Chapter 351, or a rule of another licensing board in this state, or of a statute or rule of another state if the violation constitutes a violation of the laws of this state or a Board [~~board~~] rule; or

(19) the applicant has violated the provisions of a disciplinary order or agreement issued by the Board.

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

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204419
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 305-8500

♦ ♦ ♦

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING
SUBCHAPTER D. APPLICATION PROCESS
DIVISION 12. PERMIT RENEWAL

26 TAC §745.475, §745.477

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.475, concerning What does a completed renewal application for a permit include, and §745.477, concerning What happens after Licensing receives my renewal application, in Title 26, Texas Administrative Code, Chapter 745, Licensing, Subchapter D, Application Process.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the portions of Senate Bill (S.B.) 225, 87th Legislature, Regular Session, 2021, that amended Texas Human Resources Code (HRC) §42.050(c) and §42.052(f-2). These amendments change the time period, from two to five years, that HHSC Child Care Regulation (CCR) must review for patterns of violations when evaluating whether to renew a license, certification, or registration. CCR is also proposing a rule amendment to remove requirements that a completed renewal application include verifications from the provider that deficiencies have been corrected and all fees and administrative penalties owed have been paid, because these provider verifications are not part of the current business process and CCR conducts these verifications when processing a renewal application.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.475 removes subsection (a)(3) and (4) that require a provider to verify as part of a completed renewal application that (1) the provider has corrected deficiencies; and (2) all fees and administrative penalties owed have been paid. These provider verifications are not part of the renewal application, nor are they necessary, because CCR verifies these requirements when processing the renewal application as required by §745.477(a)(3) and (5).

The proposed amendment to §745.477 changes the time period, from two to five years, CCR will review for patterns of violations when evaluating whether to renew an operation's license, certification, or registration. This amendment is necessary to comply with changes that S.B. 225 made to HRC §42.050(c) and §42.052(f-2).

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will not create a new rule;

(6) the proposed rules will expand existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed 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) reduce the burden or responsibilities imposed on regulated persons; 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 improved safety for children in out-of-home care because CCR will conduct a more extensive review of an operation's history of violations at the time of renewal, rules will reflect current business practice, and rules will comply with state law.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Jennifer.Ritter@hhs.texas.gov.

Written comments on the proposal may be submitted to Jennifer Ritter, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030 or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R106" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out requirements of Texas Human Resources Code Chapter 42.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §§42.042, 42.050, and 42.052.

§745.475. What does a completed renewal application for a permit include?

(a) A completed renewal application includes:

(1) Verification that the following information is current and accurate:

(A) Your operation's basic information on Licensing's consumer website;

(B) The list of controlling persons at your operation;

(C) The list of your governing body's members, such as officers and owners, if applicable;

(2) A statement as to whether your operation continues to need any existing waivers and variances;

~~[(3) Verification that you have corrected any deficiency with an expired compliance date, unless the deficiency is pending due process; and]~~

~~[(4) Verification that all fees and administrative penalties that you owe have been paid;]~~

(3) [~~(5)~~] Validating on your provider website the list of persons who require a background check because of their association with your operation; and

(4) [~~(6)~~] If you operate a general residential operation that provides treatment services for children with emotional disorders, a written response that addresses any public comments made regarding the renewal of the operation's license during a public hearing, if required by §745.487 of this division (relating to When is a public hearing required for the renewal of a license?).

(b) You must submit a completed renewal application for us to evaluate your permit for renewal.

§745.477. What happens after Licensing receives my renewal application?

(a) After receiving your renewal application, we evaluate whether:

(1) You completed the renewal application as required by §745.475 of this division (relating to What does a completed renewal application for a permit include?);

(2) We have cited you for repeated deficiencies or a pattern of deficiencies during the previous five [~~two~~] years;

(3) You have corrected each deficiency with an expired compliance date that is not pending due process, including an administrative review, a due process hearing, or any subsequent rights of appeal;

(4) You currently meet all background check requirements in Subchapter F of this chapter (relating to Background Checks);

(5) You have paid:

(A) All fees required by Subchapter E of this chapter (relating to Fees); and

(B) Each administrative penalty that you owe after waiving or exhausting any due process provided under Texas Human Resources Code §42.078;

(6) We must visit your operation to determine your eligibility for renewal, such as to review records to determine whether you have corrected all relevant deficiencies; and

(7) We must hold a public hearing as required by §745.487 of this division (relating to Is a public hearing required for the renewal of a license?).

(b) Within 30 days of receiving your renewal application, we will send you written notice that:

(1) We have renewed your permit;

(2) Your renewal application is incomplete as further described in subsection (c) of this section; or

(3) We refuse to renew your permit as provided in §745.8655 of this chapter (relating to When may Licensing refuse to renew my permit?).

(c) If your renewal application is incomplete, the written notice will include:

(1) Our evaluation that you did not complete one or more of the renewal application requirements at §745.475 of this division (relating to What does a completed renewal application for a permit include?);

(2) A list of the requirements that must be completed before we can renew your permit, which may include:

(A) Correcting a deficiency with an expired compliance date that is not pending due process;

(B) Meeting a certain background check requirement; or

(C) Paying any of the following:

(i) A fee required by Subchapter E of this chapter (relating to Fees); or

(ii) An administrative penalty that you owe after waiving or exhausting any due process provided under Texas Human Resources Code §42.078; and

(3) A statement that we must hold a public hearing required by §745.487 of this division (relating to When is a public hearing required for the renewal of a license?), if applicable.

(d) If your renewal application is incomplete and you submitted it during the renewal period, you have unlimited attempts to submit the missing information and to correct the deficiencies until your permit expires.

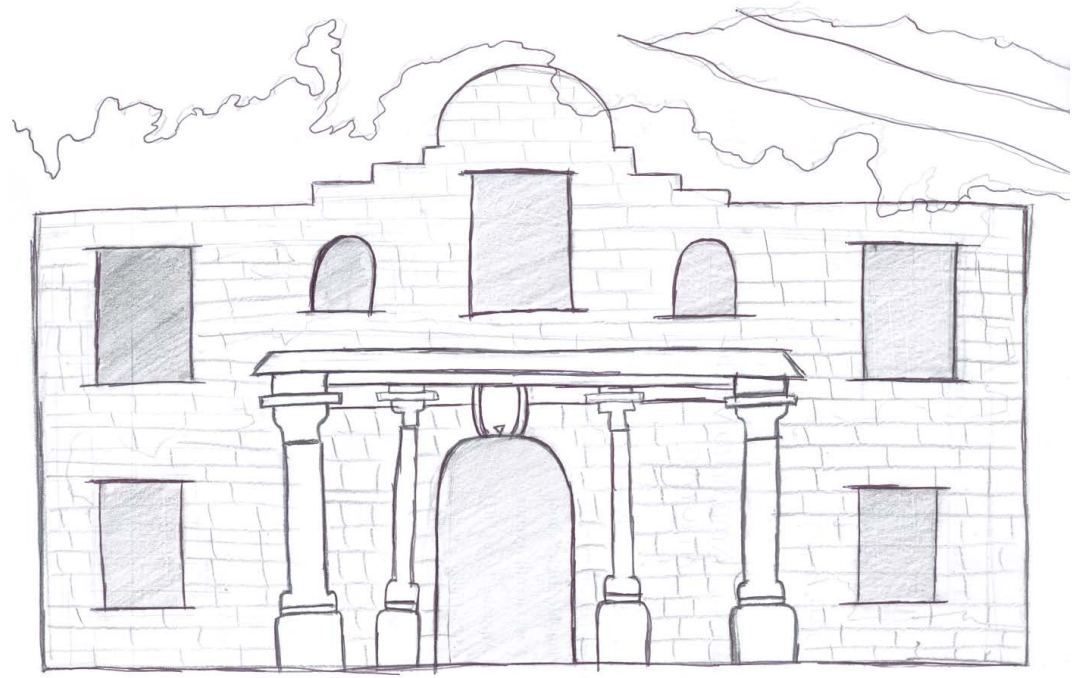
(e) If your renewal application is incomplete and you submitted it during the late renewal period, you have 15 days to submit a completed renewal application from the date it was rejected.

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

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204321
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 18, 2022
For further information, please call: (512) 438-3269

♦ ♦ ♦



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §§13.1 - 13.3, 13.6, 13.7

The Texas Historical Commission withdraws the proposed repeal of §§13.1 - 13.3, 13.6, and 13.7, which appeared in the August 19, 2022, issue of the *Texas Register* (47 TexReg 4899).

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204310
Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: November 1, 2022
For further information, please call: (512) 463-6100

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE
SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.404

The Texas State Board of Social Worker Examiners withdraws the proposed amendment to §781.404, which appeared in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6961).

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

TRD-202204365
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: November 3, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS
SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.142

The Texas Behavioral Health Executive Council withdraws the proposed amendment to §801.142, Supervised Clinical Experience Requirements and Conditions which appears in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6398).

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

TRD-202204377
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 3, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.3, 403.5, 403.15

The Texas Commission on Fire Protection withdraws proposed new §§403.3, 403.5 and 403.15 which appeared in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3038).

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204315

Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: November 1, 2022
For further information, please call:(512) 936-3812

♦ ♦ ♦

CHAPTER 463. ADVISORY COMMITTEES
SUBCHAPTER A. PRACTICE AND PROCEDURES

37 TAC §463.1, §463.3

The Texas Commission on Fire Protection withdraws proposed new §463.1 and §463.3, which appeared in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3042).

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204316
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: November 1, 2022
For further information, please call: (512) 936-3812

♦ ♦ ♦

SUBCHAPTER B. FIREFIGHTER ADVISORY COMMITTEE

37 TAC §§463.201, 463.203, 463.205, 463.207, 463.209, 463.211, 463.213

The Texas Commission on Fire Protection withdraws proposed new §§463.201, 463.203, 463.205, 463.207, 463.209, 463.211 and 463.213 which appeared in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3042).

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204317
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: November 1, 2022
For further information, please call: (512) 936-3812

♦ ♦ ♦

SUBCHAPTER C. CURRICULUM AND TESTING COMMITTEE

37 TAC §§463.301, 463.303, 463.305, 463.307, 463.309, 463.311, 463.313

The Texas Commission on Fire Protection withdraws proposed new §§463.301, 463.303, 463.305, 463.307, 463.309, 463.311, and 463.313, which appeared in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3042).

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204318
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: November 1, 2022
For further information, please call: (512) 936-3812

♦ ♦ ♦

SUBCHAPTER D. HEALTH AND WELLNESS COMMITTEE

37 TAC §§463.401, 463.403, 463.405, 463.407, 463.409, 463.411, 463.413

The Texas Commission on Fire Protection withdraws proposed new §§463.401, 463.403, 463.405, 463.407, 463.409, 463.411, and 463.413, which appeared in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3042).

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204319
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: November 1, 2022
For further information, please call: (512) 936-3812

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 25. SCHOOL HEALTH AND RELATED SERVICES

1 TAC §354.1341, §354.1342

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1341, concerning Benefits and Limitations; and §354.1342, concerning Conditions for Participation. The amendments to §354.1341 and §354.1342 are adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4607). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The School Health and Related Services (SHARS) program is jointly administered by HHSC and the Texas Education Agency (TEA). The SHARS program allows independent school districts and public charter schools to obtain Medicaid reimbursement for the provision of certain direct medical and transportation services to Medicaid enrolled students who receive benefits to meet federal and state laws guaranteeing the students a free and appropriate public education. Currently, SHARS must be prescribed in a student's individualized education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at Title 19 Texas Administrative Code (TAC) §89.1001.

The adopted amendment to §354.1341 is necessary to comply with implementation of House Bill (H.B.) 706, 86th Legislature, Regular Session, 2019. H.B. 706 amended the Texas Education Code by adding §38.033 to permit SHARS providers to bill and receive reimbursement for allowable audiology services provided to Medicaid-eligible children as prescribed in a plan created under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). H.B. 706 requires HHSC to adopt rules necessary to implement Texas Education Code Section 38.033 (redesignated as Section 38.034 by H.B. 3607, 87th Legislature, Regular Session, 2021) in consultation with the Texas Education Agency and as approved by the Centers for Medicare and Medicaid Services (CMS).

The adopted amendment to §354.1342 implements H.B. 2658, 87th Legislature, Regular Session, 2021, effective September 1, 2021. H.B. 2658 added Human Resources Code §32.0317. The adopted amendment restated and clarified the federal requirement to obtain parental consent to access a student's Medicaid in order to receive Medicaid reimbursement for all SHARS services.

The adopted amendments to §354.1341 and §354.1342 also align these rules with 1 TAC §355.8443, concerning Reimbursement Methodology for School Health and Related Services (SHARS), and include other clarifying language.

COMMENTS

The 31-day comment period ended September 6, 2022.

During this period, HHSC received comments regarding the proposed rules from six commenters, including the Texas Association of School Boards (TASB), the Texas Association of School Business Officers (TASBO), Ounce of Prevention, Houston Independent School District (ISD), Royse City ISD, and one individual. HHSC considered all comments received, both in writing and at a public hearing on August 22, 2022, regarding the proposed amendments. A summary of comments relating to §354.1341 and §354.1342 and HHSC's responses follows.

Comment: A commenter asked a clarifying question as to whether proposed amendments to §354.1341 and §354.1342 relating to the expansion of SHARS audiology services for students with a Section 504 Plan would require a student to have a 504 Plan in order for the schools to obtain reimbursement for SHARS.

Response: The proposed amendment permits Local Education Agencies (LEAs) to seek Medicaid reimbursement for providing applicable SHARS audiology evaluation and management services to eligible students with either a Section 504 Plan or an IEP. However, for all other SHARS services, an eligible student must have an IEP in order for LEAs to seek Medicaid reimbursement for the services.

Comment: A commenter expressed disagreement with the SHARS programmatic changes associated with the proposed amendments to §354.1341 and §354.1342 relating to the expansion of SHARS audiology services for students with a Section 504 Plan. The commenter asserted these proposed amendments along with proposed amendment to §355.8443 would result in more administrative work for special education teachers and administrators. The commenter requested HHSC reconsider the associated proposed rule amendments and work with school districts to find better alternatives.

Response: HHSC respectfully declines to reconsider the proposed amendments to §354.1341 and §354.1342 in response to this comment. As required by H.B. 706, HHSC consulted

with TEA on the development of the proposed amendments related to SHARS audiology evaluation and management services for students with a Section 504 Plan and considers these proposed amendments as an opportunity for LEAs to obtain additional Medicaid reimbursement. Although LEAs are not required to participate in the SHARS program and LEAs that do participate are not required to seek reimbursement for Section 504 audiology services, all participating LEAs must comply with the requirements of the program. The amendment to §355.8443 became effective October 9, 2022, and HHSC addressed applicable public comments regarding the amendment accordingly.

Comment: A commenter expressed disagreement with the SHARS programmatic changes associated with the proposed amendment to §354.1342 relating to the addition of required annual SHARS trainings. The commenter asserted the proposed amendment along with the amendment to §355.8443 would result in more administrative work for special education teachers and administrators. The commenter requested HHSC halt the associated proposed rule amendments and study the changes more fully.

Response: HHSC respectfully declines to halt proposed amendment to §354.1342 in response to this comment. LEAs will be required to complete SHARS programmatic, cost report, and time study trainings on an annual basis to be certain all applicable staff are properly informed of the requirements for participating in and seeking reimbursement for services provided under the SHARS program. LEAs are not required to participate in the SHARS program; however, if they choose to participate, they must comply with all requirements of the program. The amendment to §355.8443 became effective October 9, 2022, and HHSC addressed applicable public comments regarding the amendment accordingly.

Comment: Multiple commenters expressed disagreement with the proposed rule amendment to §354.1342, requiring compliance with parental consent and notification requirements in 34 CFR §300.154 before accessing a student's Medicaid to pay for SHARS prescribed in the student's Section 504 Plan or IEP. The commenters asserted the inclusion of the parental consent methodology change associated with the cost reports and new parental consent rules requiring the date of consent will reduce federal reimbursements to schools for special education services. The commenters requested HHSC either halt or revise the associated proposed rule amendments and study the changes more fully.

Response: HHSC respectfully declines to revise or halt the proposed amendment to §354.1342 in response to this comment. The parental consent requirements are not new. As stipulated in 34 CFR §300.154, LEAs have always been required to obtain parental consent prior to accessing a student's Medicaid benefits to pay for SHARS. Any related changes to cost report methodology are outside the scope for the proposed amendment to §354.1342.

Comment: Multiple commenters expressed disagreement with the proposed amendment to §354.1342, requiring compliance with §355.8443. The commenters asserted that the proposed amendment to related rule §355.8443, published in the April 29, 2022, issue of the *Texas Register* have not been implemented; thus, creating confusion as stakeholders do not have final rule to comply with. Additionally, the commenters expressed concern relating to the proposed amendment to §355.8443 indicating disagreement with proposed changes to the SHARS cost reporting methodology, interim claiming, IEP ratio, time study participant list, and associated parental consent requirements. The commenters requested HHSC either halt or revise the associated proposed rule amendments and study the changes more fully.

Response: HHSC respectfully declines to halt or revise the proposed amendment to §354.1342 in response to this comment. HHSC acknowledges the proposed amendment to §355.8443 was published in the April 29, 2022, issue of the *Texas Register,* which was before the proposed amendments to §354.1341 and §354.1342 were published. However, LEAs currently are required to comply with §355.8443, and the proposed amendment to §354.1342 clarifies this requirement. The amendment to §355.8443 became effective October 9, 2022, and HHSC addressed applicable public comments regarding the amendment accordingly.

Comment: Multiple commenters expressed concern with the SHARS programmatic changes associated with proposed amendments to §§354.1341, 354.1342, and 355.8443, as well as updates to the SHARS Medicaid medical policy relating to recently amended documentation requirements. The commenters asserted these changes taken together will negatively impact the school Medicaid program and cause participation to become more difficult, which is not in alignment with recent information released from CMS on the subject of "School-Based Services in Medicaid: Funding, Documentation and Expanding Services." The commenters requested HHSC either halt or revise the associated proposed amendments and study the changes more fully.

Responses: HHSC respectfully declines to halt or revise proposed amendments to §354.1341 and §354.1342 in response to this comment. HHSC believes the proposed amendments allowing LEAs to seek reimbursement for providing applicable SHARS audiology evaluation and management services to eligible students with a Section 504 Plan are aligned with the referenced information bulletin released by CMS. LEAs are not required to participate in the SHARS program; however, if they choose to participate, they must comply with all requirements of the program, including documentation requirements. The amendment to §355.8443 became effective October 9, 2022, and HHSC addressed applicable public comments regarding the amendment accordingly.

Comment: A commenter expressed the need for increased transparency and stakeholder participation, asserting that decisions are being made without necessary input from educators and administrators who work in special education.

Response: HHSC acknowledges this comment but respectfully disagrees with the commenter that decisions are being made without stakeholder input. HHSC sought stakeholder input and comment from educators, administrators, providers, and the general public at various intervals during the SHARS rulemaking process. HHSC engaged TEA during the rule development phase prior to publishing the proposed amendments in the *Texas Register* on August 5, 2022. HHSC accepted public input throughout the public comment period, and during the public hearing on August 22, 2022, at which interested parties had the opportunity to provide verbal and written comments regarding the proposed amendments.

STATUTORY AUTHORITY

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

Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204422
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 27, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-2935

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

The Texas Department of Agriculture (the Department) adopts the repeal of Title 4, Part 1, Chapter 1, Subchapter P, concerning Appeal Procedures for the Food and Nutrition Programs. The repeals are adopted without changes to the proposed text as published in the July 15, 2022 issue of the *Texas Register* (47 TexReg 4037) and will not be republished. In conjunction with this repeal, new rules are adopted in this issue of the *Texas Register.*

The repeal of existing rules for appeal procedures for the food and nutrition programs and new rules are the result of a comprehensive review of the subchapter pursuant to the four-year rule review prescribed by Texas Government Code §2001.039. The repeal of existing rules and new rules will eliminate duplicative and unnecessary provisions and will provide for a more simple and efficient appeals process for the Department's food and nutrition programs. The new rules are adopted in Chapter 26 to consolidate rules for food and nutrition programs.

No comments were received on the proposed repeals.

SUBCHAPTER P. APPEAL PROCEDURES FOR THE FOOD AND NUTRITION PROGRAMS

DIVISION 1. APPEAL PROCEDURES FOR THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

4 TAC §§1.1000 - 1.1004

The repeal of Chapter 1, Subchapter P, Division 1, §§1.1000-1.1004 is adopted under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204431
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 27, 2022
Proposal publication date: July 15, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 2. APPEAL PROCEDURES FOR THE SUMMER FOOD SERVICE PROGRAM (SFSP)

4 TAC §1.1010, §1.1011

The repeal of Chapter 1, Subchapter P, Division 2, §1.1010 and §1.1011 is adopted under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204433
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 27, 2022
Proposal publication date: July 15, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 3. APPEAL PROCEDURES FOR THE NATIONAL SCHOOL LUNCH PROGRAM (NSLP)

4 TAC §1.1020, §1.1021

The repeal of Chapter 1, Subchapter P, Division 3, §1.1020 and §1.1021 is adopted under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204434

Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 27, 2022
Proposal publication date: July 15, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 4. APPEAL PROCEDURES FOR THE SCHOOL BREAKFAST PROGRAM (SBP)

4 TAC §1.1030, §1.1031

The repeal of Chapter 1, Subchapter P, Division 4, §1.1030 and §1.1031 is adopted under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204435
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 27, 2022
Proposal publication date: July 15, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 5. APPEAL PROCEDURES FOR THE SPECIAL MILK PROGRAM FOR CHILDREN (SMP)

4 TAC §1.1040, §1.1041

The repeal of Chapter 1, Subchapter P, Division 5, §1.1040 and §1.1041 is adopted under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204437
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 27, 2022
Proposal publication date: July 15, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

DIVISION 6. ADMINISTRATIVE HEARING PROCEDURES FOR CONDUCTING THE APPEALS OF THE FOOD AND NUTRITION PROGRAMS

4 TAC §§1.1050 - 1.1053

The repeal of Chapter 1, Subchapter P, Division 6, §§1.1050-1.1053 is adopted under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204438
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 27, 2022
Proposal publication date: July 15, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER E. APPEAL PROCEDURES FOR FOOD AND NUTRITION PROGRAMS

4 TAC §§26.200 - 26.207

The Texas Department of Agriculture (the Department) adopts new §§26.200, 26.202 and 26.206 without changes to the proposed text as published in the July 15, 2022, issue of the *Texas Register* (47 TexReg 4039), and §§26.201, 26.203 - 26.205, and 26.207 without changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6360). The rules will not be republished. In conjunction with the adoption of the new rules, the repeal of existing rules for appeal procedures for the food and nutrition programs located in Chapter 1, Subchapter P is adopted in this issue of the *Texas Register.*

The new rules for appeal procedures for the food and nutrition programs and the repeal of existing rules are the result of a comprehensive review of Chapter 1, Subchapter P pursuant to the four-year rule review prescribed by Texas Government Code §2001.039. The adopted rules eliminate duplicative and unnecessary provisions and will provide for a more simple and efficient appeals process for the Department's food and nutrition programs.

Adopted new §26.200 explains the purpose of these rules.

Adopted new §26.201 defines important terms for the subchapter.

Adopted new §26.202 enumerates actions that are subject to appeal.

Adopted new §26.203 sets forth the appeal procedures for the food and nutrition programs administered by the Department.

Adopted new §26.204 provides the procedures for filing documents.

Adopted new §26.205 sets forth the procedures for a hearing.

Adopted new §26.206 describes the abbreviated appeal process.

Adopted new §26.207 describes the standard of review.

No comments were received regarding the proposed rules.

The new rules are adopted under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204440
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 27, 2022
Proposal publication date: July 15, 2022
For further information, please call: (512) 936-9360

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.65

The Railroad Commission of Texas (the "Commission") adopts amendments to §3.65, relating to Critical Designation of Natural Gas Infrastructure, with changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5560). The amendments are adopted to simplify the rule language and the process for designating certain natural gas facilities and entities critical during energy emergencies.

Section 3.65 went into effect December 20, 2021. It implemented requirements from House Bill 3648 and Senate Bill 3 (87th Legislature, Regular Session) directing the Commission to collaborate with the Public Utility Commission of Texas (the "PUC") to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies. The Commission's process for designating certain facilities critical has been in place for approximately ten months. During that time, the Commission became aware of points of confusion in current §3.65. Additionally, during the recent comment period for proposed 16 Texas Administrative Code §3.66 (relating to Weather Emergency Preparedness Standards), the Commission received several comments requesting changes to §3.65. The Commission addresses some of those concerns with these adopted amendments.

The Commission received 35 comments on the proposal: 7 from associations, 18 from companies/organizations, and 10 from individuals.

Comments on proposed amendments to §3.65(a) - Definitions

CrownQuest Operating (CrownQuest), Office of Public Utility Counsel (OPUC), Permian Regulatory Solutions (PRS), and the Texas Oil and Gas Association (TXOGA) support the Commission's proposed amendments to the definition of "energy emergency." The Commission appreciates these comments.

TXOGA and the Texas Independent Producers and Royalty Owners Association (TIPRO) requested that the Commission notify operators with facilities subject to the requirements of §3.65 when the Electricity Reliability Council of Texas (ERCOT) issues an Energy Emergency Alert (EEA) 1, EEA 2, or EEA 3.

The Commission will notify operators of a weather emergency as defined in §3.66. Thus, the Commission will notify operators when weather conditions result in an energy emergency, as that term is modified in these amendments.

The Texas Competitive Power Advocates (TCPA) and Texas Electric Cooperatives (TEC) suggested the Commission align the definition of "energy emergency" with the definition of "weather emergency" adopted by the PUC. TCPA and TEC expressed concern that the Commission's definition of "energy emergency," which focuses on ERCOT-issued EEAs, places the threshold for targeted action at a point in an emergency where there could be insufficient time to implement meaningful steps to stave off further situational deterioration. TCPA and TEC noted that gas facilities should address the risk of losing production long before the onset of an EEA. Thus, TCPA suggested the Commission define "energy emergency" more broadly to include an Operating Condition Notice, Advisory, Watch, or some other threshold prior to an EEA and TEC suggested the Commission define "energy emergency" to include an Emergency Notice.

The Commission declines to change the definition in response to these comments. The requirement in the Commission's weatherization rule, §3.66, is for facilities subject to that rule to "implement measures to prepare to operate during a weather emergency." Weather emergency is defined in §3.66 as "weather conditions such as freezing temperatures, freezing precipitation, or extreme heat in the facility's county or counties that result in an energy emergency as defined by §3.65 of this title." Because an energy emergency is now defined as when the reliability coordinator issues an Energy Emergency Alert (EEA) 1, 2, or 3, facilities subject to §3.66 are required to implement measures to prepare to operate in weather conditions that result in the issuance of an EEA 1, 2, or 3. The Commission finds that if a facility has implemented measures to prepare to operate in weather conditions that cause an EEA 1 or higher, then consequently, the facility is prepared to operate in less serious conditions, such as those that prompt a advisory, watch, or emergency notice. Thus, the facility will be prepared to operate in the period leading up to the emergency - the period about which TCPA and TEC expressed concern.

Henry Resources, LLC (Henry) asked that the Commission include clarifying definitions of "electricity supply chain map" and "Director."

The Commission agrees that adding definitions to clarify these terms is helpful and adopts subsection (a) with changes to add the definitions in paragraphs (4) and (5).

Comments on proposed amendments to §3.65(b) - Critical Designation Criteria

Bluefin Resources, Citation Oil and Gas Corp. (Citation), Creek Energy, Inc., CrownQuest, Henry, OPUC, Diamondback, PRS, Southwest Gas Systems, Stephens Engineering, Permian Basin Petroleum Association (PBPA), the Texas Alliance of Energy Producers (Alliance), TXOGA, TIPRO, and four individuals expressed support for the Commission's proposed amendments in subsections (b)(1)(A) and (b)(1)(B), which increase the average amount of gas a gas well or oil lease must produce for it to be designated critical. The Commission appreciates the support of these commenters.

Diamondback requested the Commission raise the threshold to 1500 Mcf/day for oil leases. The Atmos Cities Steering Committee (ACSC) and TEC also asked that the Commission further limit the list of critical facilities. Conversely, Commission Shift expressed concern that too many facilities are excluded and the remaining facilities designated critical will not produce enough gas to meet peak demand experienced during Winter Storm Uri.

These four comments highlight the difficulty in striking the appropriate balance in determining the amount of critical facilities - designating too many facilities critical places a burden on electric utilities when prioritizing critical loads during an energy emergency and designating too few facilities critical risks losing natural gas supply to meet demand during the emergency. As the Commission noted in the preamble for the proposed amendments, raising the threshold in §3.65(b)(1) to 250 Mcf/day for gas wells and 500 Mcf/day for oil leases producing casinghead gas leaves 78.4% of the total natural gas produced per day, or approximately 24.5 Bcf/day of natural gas, designated as critical while removing the low-producing gas wells and oil leases, which aggregated together statewide only represent a small portion of the natural gas production. However, they account for a large number of the facilities. Thus, removing these facilities from the list reduces the burden on electric utilities and helps ensure other electric customers receive power in an emergency. Additionally, gas-fired generation nameplate capacity in Texas is 15 Bcf/day according to TCPA. During Winter Storm Uri, peak day demand for gas-fired generation was approximately 9 Bcf/day based on American Gas Association's estimates.

The Commission also notes that raising the volume thresholds in subsection (b)(1)(A) and (b)(1)(B) does not preclude facilities producing under the thresholds from producing gas during an energy emergency. Removing those wells and leases from the critical gas supplier list merely prevents their power from being prioritized by electric utilities during a load-shed event. However, the facilities may be located on the same meter as another critical facility such that their power remains on and they continue to produce, or they may otherwise maintain power, allowing more than 24.5 Bcf of production to be available. Therefore, the Commission declines to make changes to subsection (b)(1)(A) or subsection (b)(1)(B) in response to these comments.

ACSC also commented that the Commission has not provided enough guidance to electric utilities regarding how the facilities should be prioritized. The Commission should establish a hierarchy to provide direction during load shed events.

The Commission declines to make any changes in response to this comment. The PUC has the authority to regulate electric utilities and has published guidance on how critical natural gas facilities should be prioritized for load-shed purposes. The guidance is available on the PUC's website.

Regarding the list of facilities in subsection (b)(1), the Alliance and TXOGA requested that the facilities only be designated critical if they are also included on the electricity supply chain map developed by the Electricity Supply Chain Security and Mapping Committee pursuant to Senate Bill 3 (87th Legislature, Regular Session).

The Commission disagrees. The facilities on the electricity supply chain map are included on the map because they are located in the natural gas supply chain for electric generation. Thus, they are designated critical to ensure electric utilities prioritize their power during an energy emergency and they continue to operate to provide gas for electric generation. However, facilities that are not included on the map provide natural gas to other end users, notably, local distribution companies (LDCs) that serve city gates. Therefore, these facilities should also remain critical.

Relatedly, TEC asked that the Commission further limit the list of critical facilities to only those that directly support the delivery of gas to gas-fired electric generation or to end users.

The Commission notes that facilities that help provide gas to gas-fired electric generation and other end users are those designated critical in §3.65(b)(1). Other facilities designated critical in subsection (b)(1), such as saltwater disposal facilities, are included because if they lose power and are unable to operate, facilities that more directly contribute to the supply chain may be unable to operate. The Commission also notes that it adopts changes to the list of critical facilities in subsection (b) due to other comments.

AVAD Operating LLC, Slant Operating, PBPA, the Alliance, and one individual asked the Commission to find a solution for large waterflood/enhanced oil recovery (EOR) projects. These operations cover large areas of land (often thousands of acres) and are particularly vulnerable to cold weather but produce negligible volumes of casinghead gas from each unit, especially considering the likelihood of high energy intensive electricity equipment required to operate a single lease.

The Commission understands this concern and adopts subsections (a) and (b) with changes to address EOR projects. Subsection (a) is adopted with a change to define "EOR project" for the purposes of §3.65 as "an enhanced oil recovery project as defined in §3.50(c)(6) of this title (relating to Enhanced Oil Recovery Projects-Approval and Certification for Tax Incentive) with at least one injection well permitted under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) whether or not the project has received Commission approval or certification under §3.50." Changes adopted in subsection (b)(1)(B) exclude EOR projects from oil leases designated critical provided the EOR project consumes more energy than it produces calculated by comparing the amount of electricity used to the amount of gas produced both in Million British Thermal Units (MMBTU).

Henry, TXOGA, the Alliance, WaterBridge Operating LLC, and Stephens Engineering commented about the Commission's critical designation of saltwater disposal facilities and saltwater disposal pipelines in §3.65(b)(1)(H). Henry and TXOGA requested that the Commission limit the saltwater disposal facilities designated as critical to those that support the other facilities designated critical in subsection (b)(1). The Alliance and WaterBridge raised concerns that the designation of all saltwater disposal facilities in subsection (b)(1)(H) does not allow flexibility for saltwater disposal well networks connected through pipelines. These networks allow operators to shift disposal volumes to different areas if constraints arise in one part of their system. The Al-

liance and WaterBridge requested the rule allow operators of interconnected systems to only designate as critical the portions of the network necessary to ensure sufficient disposal capacity is maintained. Stephens asked for clarification on which types of saltwater disposal facilities are included in subsection (b)(1)(H) and asked that critical designation be limited to commercial saltwater disposal facilities.

The Commission declines to make changes in response to these comments. The Commission prefers that operators of saltwater disposal facilities who do not want their facilities to be critical seek an exception to critical designation through the process in subsection (e). If a saltwater disposal facility is not on the electricity supply chain map and can provide objective evidence that it does not support a critical facility listed in subsection (b)(1)(A)-(G), then it is eligible for an exception to critical designation, as discussed in the section regarding comments on subsection (e) below.

Similarly, the Commission disagrees with the Alliance and WaterBridge that saltwater disposal connected system operators should be able to determine which facilities on their system are critical. The Commission notes that all saltwater disposal facilities that are not included on the electricity supply chain map are now eligible to request an exception to critical designation. The Commission prefers saltwater disposal facilities to go through the exception process rather than removing these facilities from the list of critical facilities.

The Commission disagrees with Stephens that critical saltwater disposal facilities should be limited to commercial facilities. The Commission defines commercial saltwater disposal facilities as those whose owner or operator receives compensation from others for the storage, reclamation, treatment, or disposal of oil field fluids or oil and gas wastes that are wholly or partially trucked or hauled to the facility and whose primary business purpose is to provide these services for compensation. This definition excludes saltwater disposal facilities that receive waste through a pipeline and the Commission determines facilities that receive waste through a pipeline should be designated critical.

TCPA asked the Commission to provide clarity as to whether gas infrastructure facilities used to export natural gas from Texas via intrastate gas pipelines to Mexico or by way of liquefied natural gas (LNG) liquefaction and export terminals into the international LNG market are or should be designated as critical infrastructure.

LNG facilities are not currently designated critical under §3.65(b)(1) and the Commission declines to make changes to subsection (b) to include LNG facilities or LNG export terminals. Senate Bill 3 specified that the Commission's critical designation rule should designate certain facilities that are associated with providing natural gas in this state. LNG being exported for the international market is outside the intended scope of Senate Bill 3. Additionally, the Commission has no jurisdiction over LNG export facilities. A natural gas pipeline subject to the jurisdiction of the Commission that delivers natural gas to an LNG liquefaction plant may be designated critical under subsection (b)(1)(D) ("natural gas pipelines and pipeline facilities including associated compressor stations and control centers"); however, if the pipeline is not on the electricity supply chain map and all of the natural gas delivered by the pipeline facility is consumed outside of this state, the pipeline is eligible to apply for an exception to critical designation pursuant to §3.65(e).

TXOGA requested additional clarity regarding natural gas liquids transportation and storage facilities, which are designated critical in §3.65(b)(1)(G). TXOGA suggested that natural gas liquids that originate at crude oil wells be exempted from critical designation.

The Commission disagrees. Section 3.65(b)(1) designates as critical natural gas liquids transportation and storage facilities to ensure facilities that store or carry off natural gas liquids retain power. If these facilities lose power and a gas processing facility or an oil lease operator has no transport or storage for natural gas liquids, then the liquids may back up and slow or stop production or processing of natural gas.

Henry requested that the Commission clarify the term "critical customer," in subsection (b)(2) by changing the description to "a critical customer is a critical gas supplier that requires electricity to operate."

The Commission agrees to clarify the term "critical customer," but does not adopt Henry's proposed language, which would inadvertently include facilities that have their own power source or otherwise do not receive power from an electric entity. The Commission adopts §3.65(b)(2) with the following description: "A critical customer is a critical gas supplier that requires electricity delivered by an electric entity to operate." This change ensures that only customers of electric entities are deemed "critical customers" such that only true customers are required to be prioritized by the electric entities for load shed purposes.

Comments on proposed amendments to §3.65(c) - Request for Critical Designation

Citation and PRS commented in support of the Commission's proposed amendments to subsection (c). The Commission appreciates the support of these commenters.

TCPA and TEC commented that facilities that qualify for an exception under the list of reasonable bases and justifications in §3.65(e)(2)(A)-(C) should not be eligible to request critical designation under §3.65(c).

The Commission agrees in part. A facility that does not contribute to the natural gas supply chain in Texas should not be designated critical *unless* the facility supports a facility designated critical in subsection (b)(1). To be designated critical through the process in §3.65(c), a facility's operator must show with objective evidence that the facility's operation is required for another facility designated critical in §3.65(b) to operate. The Commission retains this process in the adopted amendments to ensure facilities not listed in subsection (b)(1) may apply to retain power if their operation is required for a critical facility to operate.

ACSC requested clarification regarding the process for requesting critical designation under §3.65(c). Specifically, ACSC requested clarification regarding who makes the determination that a facility is critical and how that decision is made.

The Commission agrees to clarify the process for requesting critical designation and adopts subsection (c) to state that the Critical Infrastructure Division director reviews applications submitted under §3.65(c). The changes also clarify that if a request for critical designation is denied, the applicant may request a hearing. The Commission notes that the determination will be made based on the whether the requirements specified in subsection (c) are satisfied. Subsection (c) requires an applicant to submit objective evidence that the facility requesting critical designation must operate in order for a facility designated critical in subsection (b) to operate.

Comments on proposed amendments to §3.65(e) - Critical Designation Exception

Henry, Occidental (Oxy), PBPA, PRS, the Alliance, TXOGA, and TIPRO commented that every critical facility should be able to request an exception regardless of the facility's status on the electricity supply chain map.

The Commission declines to make any changes in response to these comments. It is the Commission's understanding that the legislature does not support allowing facilities on the electricity supply chain map to apply for an exception to critical designation. When §3.65 was proposed in 2021, the Senate Business and Commerce Committee submitted a comment letter on the proposed rule. The letter stated, "Under no circumstances should a component of the natural gas supply chain that is directly tied to electric power generation be allowed to opt out of the critical designation requirements and subsequent weatherization."

TIPRO also requested that critical facilities that are not included on the electricity supply chain map be allowed to request an exception.

The amendments as proposed allow critical facilities not included on the electricity supply chain map to request an exception if the operator's reasonable basis and justification for the exception aligns with the examples provided in §3.65(e)(2).

The Alliance suggested that disposal wells that are disposing relatively small volumes in their daily operations be allowed to apply for a critical designation exception, just as disposal wells not supporting critical wells are currently allowed to do.

The amendments as proposed allow saltwater disposal facilities and pipelines not included on the electricity supply chain map to request an exception. A reasonable basis and justification for saltwater disposal facilities is added in §3.65(e)(2)(D) in response to comments below.

Regarding the examples of a reasonable basis and justification that may be provided with an exception request, TCPA noted that there may be more than just natural gas production that is directed entirely out of state and the reasonable basis and justification in §3.65(e)(2)(B) should be amended to include other types of facilities.

PRS and an individual requested the Commission add more bases for exception into the rule to allow for more administrative exceptions and reduce the number of hearings. Henry and PBPA requested that the Commission include a reasonable basis and justification specific to saltwater disposal facilities in §3.65(e)(2).

The Commission adopts §3.65(e)(2) with changes in response to these comments. The Commission adds "processed" and "delivered" in subsection (e)(2)(B) to address processing facilities and pipeline facilities. The Commission also adopts new §3.65(e)(2)(D) to provide a reasonable basis and justification applicable to saltwater disposal facilities. A saltwater disposal facility or saltwater disposal pipeline may request an exception if it is not included on the electricity supply chain map and it provides objective evidence to show that the facility or pipeline does not support a facility designated critical in §3.65(b)(1)(A)-(G).

Stephens Engineering commented that it is impossible to provide objective evidence of where lease water comes from for a non-commercial saltwater disposal facility. Thus, Stephens suggests a statement from the operator should be sufficient evidence to support an exception application.

The Commission understands this concern but declines to remove the requirement for objective evidence. To grant administrative approval without a hearing, Commission Staff must be able to verify the reasonable basis and justification claimed by a facility seeking an exception to critical designation.

Citation asked that the Commission include in the list of reasonable bases and justifications the bases and justifications approved in a final order by the Commission after a hearing. Henry also requested that a reasonable basis and justification approved in a final order of the Commission be added in subsection (e)(2).

The Commission does not agree these should be added to the rule because the list would become incomplete if the Commission issues additional final orders after a hearing.

TXOGA commented that the examples of reasonable bases and justifications does not adequately address possible exceptions for natural gas liquids pipelines.

The Commission notes that the list of reasonable bases and justifications is not exhaustive. Under the proposed amendments, natural gas liquids facilities and pipelines are eligible to request an exception if the facility/pipeline is not included on the electricity supply chain map. The Commission makes no changes in response to this comment.

In addition to Henry's comments requesting provisions in §3.65(e)(2) for saltwater disposal facilities and a reasonable basis and justification approved after a hearing, Henry requested that the following reasonable bases and justifications be added to subsection (e)(2): (1) The facility does not produce gas that supports electric generation in the state; (2) Gas production reported on an oil lease basis is disproportionately high when compared to gas production attributable to the individual oil wells on the lease; (3) The Commission has not provided at least 30 days written notice to the operator prior to the March 1 or September 1 Form CID filing deadline that the facility is included on the map; and (4) Other good cause shown, including but not limited to, facilities are capable of reducing their demand in response to an instruction issued by the applicable power region's reliability coordinator during certain grid conditions.

The Commission declines to add these provisions to §3.65(e)(2). First, the Commission notes that the list of reasonable bases and justifications contains examples and is not an exhaustive list. Operators seeking an exception may provide objective evidence of a reasonable basis and justification not contained in the list and receive administrative review. If the exception request is administratively denied, the operator may request a hearing.

Regarding Henry's first suggestion, the Commission disagrees that a facility that does not produce gas for electric generation should be able to obtain an exception on that basis alone. Facilities that do not support electric generation help provide gas for other end users, such as local distribution companies (LDCs) that serve city gates. Regarding Henry's second item, the Commission partly addressed this concern with changes to subsection (b)(1)(B) regarding EOR projects. The Commission also declines to add Henry's third item. The Commission understands operators' concerns with receiving notice of their facilities on the electricity supply chain map because a facility's map status affects whether it is required to weatherize pursuant to §3.66. Although §3.65 and §3.66 are related, the purpose of §3.65 is not solely to identify facilities required to weatherize, but to designate facilities as critical customers so that critical customers' power is prioritized during a load-shed event. Thus, an operator's failure

to receive notice from the Commission regarding a facility's map status is not a sufficient reason to be exempt from critical designation. Finally, the Commission declines to add Henry's fourth item. Section 3.65 already allows an operator to submit an exception application for other good cause shown, because the list included in subsection (e)(2) merely contains examples. Further, it is not appropriate for the Commission to make changes that impact demand response programs managed by reliability coordinators and outside the Commission's authority to regulate. Operators concerned with demand response program implications may contact their reliability coordinator regarding changes to these programs.

The Commission received several comments regarding amendments proposed in §3.65(e)(2)(D), which allow an operator to submit objective evidence of an electric utility's denial of a facility's critical designation application as a reasonable basis and justification in support of an exception application. The Commission notes that this provision proposed in subsection (e)(2)(D) is adopted as subsection (e)(2)(E) because of the new language related to saltwater disposal facilities adopted as subsection (e)(2)(D).

TCPA's comment stated that for the majority of Texas, the "electric entity" that will receive and review critical designation forms required under 16 TAC §25.52(h) (relating to Reliability and Continuity of Service) will be Transmission and Distribution Utilities (TDUs). TDUs deliver electricity, but in the ERCOT competitive market, the provision of electricity is a transaction between generators and retail electric providers for the benefit of providing service to the customer. Thus, TCPA suggested the word "providing" in proposed subsection (e)(2)(D) be changed to "delivering."

The Commission appreciates this insight from TCPA and adopts §3.65(e)(2)(E) with the requested change.

Commission Shift commented that a denial from an electric utility should not be a reason an operator is eligible for an exception under subsection (e)(2) because designating facilities critical is not the sole purpose of §3.65. PBPA expressed support for the proposed amendment allowing an exception if a facility's critical load request is denied by their utility.

The Commission understands that a facility that receives an exception from critical designation is no longer required to weatherize under the requirements of §3.66. The Commission considers an exception to critical designation and, consequently, weatherization requirements, appropriate when a facility's electric utility has communicated the facility's power will not be prioritized during a weather emergency. It would be unreasonable to require an operator to invest in weatherizing a facility that is a critical customer (i.e., a facility requiring electricity from an electric utility to operate) if the electric utility communicates the customer's electricity will not be prioritized.

ACSC requested a change to subsection (e)(2)(D) to specify electric utilities' authority to deny a request for critical status.

The Commission does not regulate electric utilities and, therefore, declines to make changes addressing electric utilities' authority for denials. However, the Commission notes that Utilities Code §38.074 directs electric utilities to be provided discretion to prioritize power delivery and power restoration among facilities and entities designated critical, as circumstances require.

Commission Shift commented generally on subsection (e)(2) expressing concern that the list contains examples of reasonable bases and justifications such that the Commission could routinely grant exceptions for other reasons not listed in the rule.

Commission Shift is correct that the Commission retains discretion to approve exceptions for additional reasons. However, the Commission included the examples because the Commission considers those reasons sufficient. A request for an exception that does not align with the examples in subsection (e)(2) would require a hearing before it could be approved.

Henry requested the Commission revise §3.65(e) to require the CID director to administratively approve a request for exception if the exception was previously approved for the same facility or facilities.

The Commission declines to add the requested language. An exception will be administratively approved if it meets the requirements of §3.65 at the time the exception request is filed.

Other Comments

Proposed amendments in subsection (e) reference the electricity supply chain map, and the Commission received several comments about the map. Atmos Pipeline Texas (APT), PBPA, TXOGA, and an individual asked that the Commission clarify the process operators should use for adding or removing assets from the map.

These comments are outside the scope of this rulemaking, but the Commission will consider these comments as it works to ensure the map continues to be viable and accurate.

An individual, WaterBridge, and Commission Shift expressed concerns about the confidentiality of the electricity supply chain map.

The Commission does not have authority to address these concerns. The information on the electricity supply chain map is deemed confidential by Texas Utilities Code §38.203.

ACSC and the Joint TDUs (AEP Texas Inc., Entergy Texas, Inc., Oncor Electric Delivery Company LLC, Southwestern Electric Power Company, Southwestern Public Service Company, and Texas-New Mexico Power Company) noted that §3.66 requires a facility to weatherize only if it is designated critical under §3.65 and on the electricity supply chain map. Thus, some facilities may be critical but not on the map and, therefore, are not required to weatherize. The comments stated it does not make sense for utilities to have to prioritize facilities as critical if they are not required to weatherize. The Joint TDUs stated the Commission should require all critical facilities to weatherize, not just those that are included on the map.

The Commission declines to make any changes in response to these comments. The Commission's authority in Natural Resources Code §86.044 to adopt rules requiring gas supply chain facilities to implement measures to prepare to operate during a weather emergency (i.e., "weatherize) is limited to gas supply chain facilities that are (1) included on the electricity supply chain map; and (2) designated critical by the Commission. The legislature included the two elements intentionally. If the legislature intended for all facilities designated critical to weatherize, it would not have included the first element, which limits the list of facilities required to weatherize to those on the electricity supply chain map. Requiring facilities that are not on the map to weatherize goes beyond what was authorized in §86.044.

Commission Shift requested that the Commission clearly explain how both gas production and storage can meet demand needs during the next weather event. The Commission should also

disclose its plan for extra supply in the event the supply chain is not functioning in all geographies. The CID should develop systems and processes to regularly compare projected gas demand against the supply that can be generated from facilities designated as critical and subject to the weatherization rule.

The Commission will not "establish a plan for extra supply" because the Commission does not have authority to require facilities to operate during a weather emergency. Further, it is not appropriate to explain production and storage availability, demand needs, or CID systems and processes in §3.65; therefore, the Commission declines to make any changes to the rule in response to these comments.

Finally, the Commission received several comments that address issues outside the scope of the proposed amendments. Two individuals, PBPA, PRS, and Southwest Gas Systems commented about experiencing difficulty with the critical designation and exception request filing processes (the Form CI-D and CI-X filings, respectively).

The Commission is working to improve the filing process and resolve any technical issues that arise. The Commission has also increased its CID staff since the first filing deadline in January 2022, and more staff members are available to assist operators when filing deadlines occur.

Commission Shift expressed concern regarding when operators transfer their critical assets between the Form CI-D filing deadlines and asked how the new operator's contact information will be available if a weather emergency occurs during that timeframe.

The Commission understands this concern. For most critical facilities, the Commission requires a filing upon transfer of a facility to a new operator. The Commission can access this information during an emergency if necessary. The Commission is working to ensure it has accurate information for the remainder of the facilities. The Commission also notes that it coordinated with the PUC when §3.65 was adopted in 2021. The PUC and the electric utilities informed the Commission that the electric utilities create their critical load lists twice per year and cannot continually update the critical load information. Thus, to align with this process and lessen the administrative burden on the utilities, §3.65 requires critical customers to send their electric utility their critical customer information twice per year.

Commission Shift commented that the penalties for violations of §3.65 are too low to incentivize compliance.

The Commission disagrees and declines to make any changes because the penalty rule, §3.107 of this title (relating to Penalty Guidelines for Oil and Gas Violations), was not included in this rulemaking.

Commission Shift expressed concern that ERCOT is still using a redundant form and process to obtain information from operators on whether they represent a critical load. Commission Shift asked the Commission to coordinate with ERCOT to simplify the process for operators and reduce redundancies.

The Commission will communicate this concern to ERCOT but notes that it cannot require ERCOT to change its process.

TEC asked the Commission to provide another tool to electric utilities by allowing electric utilities to obtain assistance from the Commission in parsing critical load applications submitted to the utility.

The Commission is available to assist electric utilities with critical load applications. The Commission does not make any changes to the rule in response to this comment.

NGL Water Solutions requested an opportunity to engage with the Commission to discuss weatherization methods for saltwater disposal wells and systems.

This comment is outside the scope of §3.65 but the Commission notes it will engage with operators when it updates the Weatherization Practices Guidance Document on its website.

Finally, the Commission received a comment from an individual about hydrogen sulfide gas, which is not related to §3.65, and a comment from another individual regarding Commission trainings on §3.65. The Commission makes no changes in response to these comments.

The adopted rule language is summarized in the paragraphs below.

Amendments to subsection (a) provide more certainty regarding the definition of "energy emergency." The Commission adopts amendments to define an event with "potential to result in firm load shed" as when the reliability coordinator of a power region in Texas issues an Energy Emergency Alert Level 1 or 2. More clearly defining when there is a potential for firm load shed will provide operators with more certainty as to when an energy emergency is occurring.

Section 3.66, which was adopted concurrently when these amendments to §3.65 were proposed, contains a related definition. It defines weather emergency as "weather conditions such as freezing temperatures, freezing precipitation, or extreme heat in the facility's county or counties that result in an energy emergency as defined by §3.65 of this title." Comments received on §3.66 noted the lack of certainty in the definition due to its reference to "energy emergency" in §3.65. The adopted amendments to subsection (a) address these concerns.

As noted above, subsection (a) is also adopted with definitions of "Director," "electricity supply chain map," and "EOR project" in response to comments.

The Commission adopts amendments to the list of critical gas suppliers in subsection (b)(1). The Commission received multiple comments on the original proposal of §3.65 expressing concern that the list of critical gas suppliers encompassed too many facilities such that electric utilities may experience a burden in prioritizing the facilities for load-shed purposes. Similarly, comments on §3.66 requested reducing facilities on the list by excluding more gas wells and oil leases with marginal production. The amendments now adopted in §3.65(b)(1) exclude gas wells producing an average of 250 Mcf of natural gas per day or less and oil leases producing an average of 500 Mcf of natural gas per day or less.

The Commission also adopts subsection (b)(1)(B) with changes due to comments on EOR projects.

Third, adopted amendments in subsections (c), (e), and (f) revise requirements triggered by a critical gas supplier's inclusion on the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee. Changes to subsection (c) allow a facility that is not designated a critical gas supplier in subsection (b) an exemption from filing Form CI-D. Additional amendments are adopted in subsection (c) in response to comments requesting clarification on the process to request critical designation.

Amendments to subsection (e) and (f) clarify that if a facility designated critical in subsection (b) is included on the electricity supply chain map, it is not eligible to request an exception from critical designation.

Adopted changes to subsection (e) and (f) restate the exception process to affirmatively state which facilities are eligible for an exception rather than stating the facilities that are not eligible for an exception. The amendments remove the current language in subsection (e) and make current subsection (f) new subsection (e).

Adopted subsection (e) states that a facility designated critical under subsection (b) may request an exception unless the facility is included on the electricity supply chain map. The amendments also clarify the acceptable reasons for requesting an exception. The reasons are examples which are intended to capture the Commission's goal that facilities contributing natural gas to the supply chain in Texas are not eligible for an exception. Subsection (e)(2)(A) and (e)(2)(C) were included in the original proposal of §3.65 when it was adopted effective December 20, 2021. In this rulemaking, the exceptions are moved from subsection (e)(1) to the list in subsection (e)(2). Adopted subsection (e)(2)(B) adds language consistent with Natural Resources Code §81.073, which states, "The commission shall collaborate with the Public Utility Commission of Texas to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas *in this state* as critical customers or critical gas suppliers during energy emergencies" (emphasis added).

The Commission adopts subsection (e)(2) with changes to include new subsection (e)(2)(D), which provides a reasonable basis and justification specific to saltwater disposal facilities in response to comments.

Regarding adopted subsection (e)(2)(E), proposed as subsection (e)(2)(D), it is the Commission's understanding that some facilities designated critical customers were denied as critical loads by their electric utilities. This decision is in the electric utility's discretion. However, if a critical facility is denied as a critical load, the amendments allow the facility to request an exception such that it is not required to comply with §3.65. The exception will not be approved if the utility's denial was not communicated in writing or was due to errors made by the critical facility in submitting its critical customer information. Similarly, the exception will not be approved if the denial was based on the utility's administrative reasons, such as the facility's power is already prioritized due to its location on a meter that is already a critical load.

Other adopted amendments merely update internal references due to the removal of subsection (e) and the renaming of subsection (f).

The Commission adopts the amendments under Texas Natural Resources Code §81.073, which requires the Commission to adopt rules to establish a process to designate natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during an energy emergency; and Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Statutory authority: Natural Resources Code §§81.051, 81.052, and 81.073.

Cross reference to statute: Natural Resources Code Chapter 81.

§3.65. Critical Designation of Natural Gas Infrastructure.

(a) Definitions.

(1) In this section, the term "energy emergency" means any event that results in firm load shed or has the potential to result in firm load shed required by the reliability coordinator of a power region in Texas. An event that has the "potential to result in firm load shed" is when the reliability coordinator of a power region in Texas has issued an Energy Emergency Alert Level 1 or 2.

(2) In this section, the term "critical customer information" means the information required on Commission Form CI-D and any attachments.

(3) In this section, "any volume of gas indicated in Mcf/day" means the average daily production from the well's six most recently filed monthly production reports. Wells without six months of production reports shall average the production from the well's production reports on file with the Commission or use the production volume from the well's initial potential test or deliverability test if the well has not yet filed a production report.

(4) In this section, the term "electricity supply chain map" means the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee.

(5) In this section, the term "Director" means the Director of the Critical Infrastructure Division or the director's delegate.

(6) In this section, the term "EOR project" means an enhanced oil recovery project as defined in §3.50(c)(6) of this title (relating to Enhanced Oil Recovery Projects-Approval and Certification for Tax Incentive) with at least one injection well permitted under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) whether or not the project has received Commission approval or certification under §3.50 of this title.

(b) Critical designation criteria. The following facilities are designated critical during an energy emergency:

(1) Critical Gas Supplier. The following facilities are designated a critical gas supplier:

(A) gas wells producing gas in excess of 250 Mcf/day;

(B) oil leases producing casinghead gas in excess of 500 Mcf/day, except for EOR projects provided the EOR project consumes more energy than it produces calculated by comparing the amount of electricity used to the amount of gas produced both in Million British Thermal Units (MMBTU);

(C) gas processing plants;

(D) natural gas pipelines and pipeline facilities including associated compressor stations and control centers;

(E) local distribution company pipelines and pipeline facilities including associated compressor stations and control centers;

(F) underground natural gas storage facilities;

(G) natural gas liquids transportation and storage facilities; and

(H) saltwater disposal facilities including saltwater disposal pipelines.

(2) Critical Customer. A critical customer is a critical gas supplier that requires electricity delivered by an electric entity to operate. A critical customer is required to provide critical customer information pursuant to subsection (f) of this section to the electric entities

described in §25.52(h) of this title (relating to Reliability and Continuity of Service) and Texas Utilities Code §38.074(b)(1) so that those electric entities may prioritize the facilities in accordance with Texas Utilities Code §38.074(b)(2) and (b)(3). Priority for load shed purposes during an energy emergency is described by §25.52(h)(2) of this title and any guidance issued thereunder by the Public Utility Commission.

(c) Request for critical designation if not designated critical in subsection (b) of this section. A facility that is not designated critical under subsection (b) of this section may write to the Commission to apply to be designated critical if the facility's operation is required in order for another facility designated critical to operate. The applicant shall include objective evidence that the facility's operation is required for another facility designated critical in subsection (b) of this section to operate. The director will review the application and if the application is approved, the facility shall submit Form CI-D. If the request is denied, the applicant may request a hearing.

(d) Acknowledgment of critical status. Except as provided by subsection (e) of this section, an operator of a facility designated as critical under subsection (b) or (c) of this section shall acknowledge the facility's critical status by filing Form CI-D as provided in this subsection. In the year 2022, the Form CI-D acknowledgment shall be filed bi-annually by January 15, 2022, and either September 1, 2022, or 30 days from the date the map is produced by the Texas Electricity Supply Chain Security and Mapping Committee, whichever is later. Beginning in 2023, the Form CI-D acknowledgment shall be filed bi-annually by March 1 and September 1 of each year.

(e) Critical designation exception.

(1) A facility listed in subsection (b) of this section that is not included on the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee may apply for an exception. An applicant shall demonstrate with objective evidence a reasonable basis and justification in support of the application. The Director of the Critical Infrastructure Division will administratively approve or deny a request for an exception. If the request is denied, the Division will notify the applicant and the applicant may request a hearing to challenge the denial. The party requesting the hearing shall have the burden of proof.

(2) Examples of a reasonable basis and justification for which an exception may be granted include, but are not limited to, the following:

(A) All of the natural gas produced at the facility is consumed on site;

(B) All of the natural gas produced, processed, or delivered by the facility is consumed outside of this state;

(C) The facility does not provide gas for third-party use;

(D) For saltwater disposal facilities and saltwater disposal pipelines, the facility or pipeline does not support a facility designated critical in subsection (b)(1)(A)-(G) of this section; or

(E) The electric entity delivering electricity to the facility has provided notice that the facility's request for critical designation status was rejected, denied, or otherwise disapproved by the electric utility; provided, however, that the electric utility communicated its determination in writing, and the decision was for reasons other than the lack of correct identifying information or other administrative reasons.

(3) An applicant for exception shall submit a Form CI-X exception application that identifies each facility for which an exception is requested. The Form CI-X shall be accompanied by an exception application fee. The amount of the fee is $150 as established in Chapter 81, Texas Natural Resources Code.

(A) In the year 2022, the Form CI-X exception application shall be filed bi-annually by January 15, 2022, and either September 1, 2022, or 30 days from the date the map is produced by the Texas Electricity Supply Chain Security and Mapping Committee, whichever is later. Beginning in 2023, the Form CI-X exception application shall be filed bi-annually by March 1 and September 1 of each year.

(B) Once an operator has an approved Form CI-X on file with the Commission, the operator is not required to pay the $150 exception application fee when the operator updates the facilities identified on its Form CI-X.

(f) Providing critical customer information. A critical customer shall provide the critical customer information to the electric entities described in §25.52 of this title and Texas Utilities Code §38.074(b)(1) unless the critical customer is granted an exception under subsection (e) of this section. The critical customer information shall be provided in accordance with §25.52 of this title. The operator shall certify on its Form CI-D that it has provided the critical customer information to its electric entity.

(g) Confidentiality of information filed pursuant to this section. A person filing information with the Commission that the person contends is confidential by law shall notify the Commission on the applicable form. If the Commission receives a request under the Texas Public Information Act (PIA), Texas Government Code, Chapter 552, for materials that have been designated confidential, the Commission will notify the filer of the request in accordance with the provisions of the PIA so that the filer can take action with the Office of the Attorney General to oppose release of the materials.

(h) Exceptions not transferable. Exceptions are not transferable upon a change of operatorship. When a facility is transferred, both the transferor operator and the transferee operator shall ensure the transfer is reflected on each operator's Form CI-D or Form CI-X when the applicable form update is submitted in accordance with the bi-annual filing timelines in subsections (d) and (e) of this section. If the facility has an exception under subsection (e) of this section, the exception shall remain in effect until the next bi-annual filing deadline. If the transferee operator seeks to continue the exception beyond that time period, the transferee operator shall indicate the transferred facility on the Form CI-X pursuant to subsection (e) of this section.

(i) Failure to file or provide required information. An operator who fails to comply with this section may be subject to penalties under §3.107 of this title (relating to Penalty Guidelines for Oil and Gas Violations).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204311
Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: November 21, 2022
Proposal publication date: September 16, 2022
For further information, please call: (512) 475-1295

♦ ♦ ♦

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.43

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.43, relating to Provider of Last Resort (POLR). The commission adopts this rule with changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6363). The amended rule updates the POLR formulas for residential, and small and medium non-residential customer classes to reduce the likelihood that the POLR rate is lower than market rates. The rule will be republished.

The amended provisions include §25.43(j)(3) which would require the Electricity Facts Label (EFL) for the POLR rate to be filed by the large service provider (LSP) on a monthly basis by the 10th of each month; §25.43(m)(2)(A) and (B) which would revise the POLR rates applicable to residential, and small and medium non-residential customers; and §25.43(m)(4) which would authorize the commission to direct an LSP to adjust the POLR rate under §25.43(m)(2) upon a showing of good cause by an affected person.

The commission received comments on the proposed rule from the REP Coalition and the Office of Public Utility Counsel (OPUC).

General Comments in Support

OPUC and the REP Coalition provided general comments in support of this proposed rulemaking.

§25.43(m)(2)(A)(iii)

Proposed §25.43(m)(2)(A)(iii) prohibits the LSP energy charge from exceeding 140% of the preceding month's LSP energy charge multiplied by an adjustment factor and for that adjustment to be set to 1.0 every calendar year. Proposed §25.43(m)(2)(A)(iii) also authorizes commission staff to file a recommendation for the commission to set a different adjustment factor and requires an LSP offering POLR service to declare the adjustment factor on its EFL.

Residential Customer LSP Energy Charge Cap

The REP Coalition argued that the cap under §25.43(m)(2)(A)(iii) should be increased to 160%, rather than the proposed 140%, which would minimize the risk of market rates rising above the LSP POLR rate. The REP Coalition noted that a 140% ceiling would have been exceeded five times in 2022, while a 160% ceiling would have been exceeded only once. The REP Coalition asserted that a 140% cap on the LSP energy charge would also result in prepaid service being capped at a below-market price "approximately 40% of the year."

Commission Response

The commission agrees with the REP Coalition that the LSP POLR rate should be slightly above market rates to account for the additional risk that LSPs face in terms of potentially having to assume a large number of unexpected customers after a mass transition to POLR event. The commission also agrees that the LSP POLR rate being capped below market rates has the additional consequence of capping the rate for prepaid service below market rates. Accordingly, the commission modifies the rule to increase the cap on how much the residential LSP energy charge can increase each month from 140 percent to 160 percent. This will allow the monthly LSP POLR rate to adjust more quickly in response to actual market conditions while still providing customers with protection against the significant price spikes that a monthly formula could produce following events such as Winter Storm Uri.

Residential LSP Customer Energy Charge Adjustment Factor

The REP Coalition stated that language in the proposed rule regarding the adjustment factor is unnecessary given the other recommendations the REP Coalition made and should be deleted if the REP Coalition's recommendations are adopted.

Commission Response

The commission agrees with the REP Coalition's recommendation regarding deletion of the adjustment factor under §25.43(m)(2)(A)(iii) and adopts its proposed language. Increasing the cap to 160% will allow the LSP POLR rate to more frequently remain above market rates without an adjustment factor. Removing the adjustment factor will also reduce the complexity of administering the formula.

The REP Coalition expressed concern that, if the commission elects to implement the proposed adjustment factor, such a mechanism would be too time intensive and unwieldy to utilize when a cap adjustment becomes necessary. Specifically, a recommendation filing by commission staff, followed by commission consideration and approval during an open meeting may take too much time to properly address the circumstances during a mass transition. The REP Coalition instead recommended authority to adjust the cap be delegated to the executive director so that the adjustment can be made in a more expedient manner. The REP Coalition further recommended clarifying that, under §25.43(m)(2)(A)(iii), the default adjustment factor of 1.0 is a floor. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The adjustment factor for the residential customer POLR formula has been removed from the rule, rendering the REP Coalition's comments moot.

The REP Coalition recommended the phrase "LSP offering POLR service" under §25.43(m)(2)(A)(iii) be reworded to "LSP designated under subsection (j)" because POLR service is a "temporary, last resort service that is not meant to be proactively offered by LSPs." The REP Coalition stated that the provision specifically applies to the largest LSP for each customer class or POLR area designated under §25.43(j)(3) to supply the example EFL to commission staff and not all LSPs. The REP Coalition also indicated that the proposed language of §25.43(m)(2)(A)(iii) would require an LSP to declare the adjustment factor on the EFL, but if the adjustment factor was exercised either by the commission or reset every calendar year, the LSP would be "required to create a second EFL shortly after creating the month's initial EFL." The REP Coalition noted that the inclusion of the adjustment factor is of minimal use to customers as the average prices disclosed on the EFL are typically the most helpful information. The REP Coalition provided draft language consistent

with its recommendation but noted that if the adjustment factor is not retained in the adopted rule, then the language relating to it under §25.43(m)(2)(A)(iii) may be omitted entirely.

Commission Response

The adjustment factor for the residential customer POLR formula has been removed from the rule, rendering the REP Coalition's comments moot.

§25.43(m)(2)(B)(ii) and (iii)

Proposed §25.43(m)(2)(B)(ii) provides that the LSP customer charge component of the small and medium non-residential customer POLR rate formula is $0.025 cents per kWh. Proposed §25.43(m)(2)(B)(iii) sets the LSP demand charge component of the small and medium non-residential customer POLR rate formula be $2.00 per kW, per month, for customers that have a demand meter, and $50.00 per month for customers that do not have a demand meter.

Small and Medium Non-Residential Customer - LSP Customer Charge

The REP Coalition noted that the proposed rule does not address any changes to the LSP customer charge for POLR service to small and medium non-residential customers under §25.43(m)(2)(B)(ii). The REP Coalition recommended the LSP customer charge under §25.43(m)(2)(B)(ii) be increased to $0.09 per kWh and the LSP demand charge under §25.43(m)(2)(B)(iii) be deleted. The REP Coalition stated that not all small and medium non-residential customers have a demand meter and that the "alternative $50 monthly fee for small and medium non-residential customers without a demand meter may not provide an equitable approximation." If the commission elects to retain the LSP demand charge, then the REP Coalition alternatively recommended increasing the customer charge by $0.03 to $0.055 to appropriately account for increased costs. Specifically, the REP Coalition indicated that the increased customer charge for small and medium non-residential customers is commensurate with the increase to the LSP customer charge for residential POLR service.

Commission Response

The commission agrees that it is appropriate to modify the small and medium non-residential LSP POLR formula consistent with the modification made to the residential formula. Both customer classes are subject to the same underlying wholesale market conditions. The commission modifies the rule consistent with the REP Coalition's primary proposal to increase the LSP customer charge from $0.025 to $0.09 under §25.43(m)(2)(B)(ii) and deletes the LSP demand charge under §25.43(m)(2)(B)(iii). Further, eliminating the demand charge reduces the complexity of administering the formula.

§25.43(m)(2)(B)(iv)

Proposed §25.43(m)(2)(B)(iv) prohibits the LSP energy charge from exceeding 140% of the preceding month's LSP energy charge multiplied by the adjustment factor and for the cap to be set to 1.0 every calendar year. Proposed §25.43(m)(2)(B)(iv) authorizes commission staff to file a recommendation for the commission to set a different adjustment factor and requires an LSP offering POLR service to declare the adjustment factor on its EFL.

Small and Medium Non-Residential Customer - Energy Charge Cap

The REP Coalition recommended the 140% cap under §25.43(m)(2)(B)(iv) be increased to 160% for the same reasons provided in its comments related to §25.43(m)(2)(A)(iii).

Commission Response

The commission agrees with the REP Coalition's proposal to increase the energy charge cap to 160% for the same reasons discussed in response to comments related to the Residential Customer LSP Energy Charge Cap.

Small and Medium Non-Residential Customer - LSP Energy Charge Adjustment Factor

If the commission declines to implement its primary recommendation to delete the adjustment factor, then the REP Coalition recommended that authority to adjust the cap be delegated to the executive director and clarify in §25.43(m)(2)(B)(iv) that the default adjustment factor of 1.0 is a floor. The REP Coalition also recommended the phrase "offering POLR service" be removed from §25.43(m)(2)(B)(iv) and that the provision be reworded to indicate it is relevant only to LSPs designated under subsection (j) by insertion of the phrase "An LSP designated under subsection (j)."REP Coalition also recommended §25.43(m)(2)(B)(iv) be revised to not require an LSP to issue a second EFL after the adjustment factor is exercised, either by the commission or every calendar year, and instead allowing the adjustment factor to be built into the prices on the EFL rather than include the adjustment factor as a separate variable on the EFL. The REP Coalition also noted that if the adjustment factor is not retained in the adopted rule, then the language relating to it under §25.43(m)(2)(B)(iv) may be omitted entirely. The REP Coalition offered alternative draft language if the commission elects to maintain the LSP demand charge for the small and medium non-residential customer POLR rate, rather than increasing the LSP customer charge.

Commission Response

The adjustment factor for the small and medium non-commercial customer POLR formula has been removed from the rule, rendering the REP Coalition's comments moot.

§25.43(m)(4) - Good Cause Exception

Proposed §25.43(m)(4) provides, upon a showing of good cause by an affected person, the commission may direct an LSP to adjust the rate under §25.43(m)(2), if necessary to ensure that the rate is sufficient to allow an LSP to recover its costs of providing service.

The REP Coalition expressed support for the authorization permitting any affected person to show good cause in support of an adjustment to the LSP POLR rates. However, the REP Coalition indicated that, because the LSP POLR rates serve as the cap on the price for prepaid products, §25.43(m)(4) should be amended to reflect it is not solely applicable to LSPs, but to other affected REPs who "may not have the information to prove an LSPs' costs." The REP Coalition also recommended inserting language in §25.43(m)(4) that would clarify that any REP with a product subject to the POLR calculations under §25.43(m) is permitted recover costs associated with the provision of service to customers served under such products. The REP Coalition provided draft language consistent with its recommendations.

Commission Response

The commission declines to modify the standard for adjusting the LSP POLR rate to ensuring that the rate is sufficient to allow "any REP with products subject to the calculation(s) under subsection (m) to recover its costs of providing service" as requested by the

REP Coalition. REPs are not guaranteed cost recovery for any competitively-offered products, including prepaid products, and it would be inappropriate for the commission to consider an individual provider's costs of providing a competitive product when setting the LSP POLR rate. However, the commission agrees with the REP Coalition that providers of prepaid service are subject to the LSP POLR rate cap but may not have access to the information required to support a good cause motion based on the proposed standard of "if necessary to ensure that the rate is sufficient to allow an LSP to recover its costs of providing service." Accordingly, the commission modifies the rule to provide that the commission may direct an LSP to adjust the LSP POLR rate if necessary to ensure the rate is consistent with prevailing market conditions. This modification will allow LSP POLR providers and providers of prepaid products to support claims that the LSP POLR rate needs to be adjusted.

The commission also agrees with the REP Coalition's recommendation to revise §25.43(m)(4) to indicate the good cause rate adjustment is related to cost recovery associated with products subject to the POLR formula. This revision is consistent with the PURA §39.107(g) provision that prepaid electric service sold to residential customers may not be sold at a price higher than the price charged by the provider of last resort.

The REP Coalition also expressed concern that the existing good cause mechanism, which requires commission action, may be inefficient to address the severe circumstances such as those immediately preceding a mass transition as such action would have to be taken up at an open meeting." The REP Coalition accordingly recommended that the authority to determine a good cause exception be delegated to the commission's executive director with additional authority to shorten the notice window if circumstances require it.

Commission Response

The commission declines to delegate authority to the executive director at this time. The commission may, at a future time, delegate authority to the executive director on its own initiative.

This amendment is adopted under the following provisions of Public Utility Regulatory Act (PURA): §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §17.003, which requires electric utilities and retail electric providers to provide clear and uniform information about rates, terms, services, involuntary load shed procedures, critical designations, and procedures for applying for critical designations; §17.102, which directs the commission to adopt and enforce rules requiring that charges on an electric service provider's bill be clearly and easily identified, §39.101, which requires the commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; and §39.106, which requires that the commission designate providers of last resort.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.003, 17.102, 39.101, 39.106

§25.43. Provider of Last Resort (POLR).

(a) Purpose. This section establishes the requirements for Provider of Last Resort (POLR) service and ensures that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.

(b) Application. The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (r) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, must be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).

(c) Definitions. The following terms when used in this section have the following meanings, unless the context indicates otherwise:

(1) Affiliate--As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs).

(2) Basic firm service--Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

(3) Billing cycle--A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.

(4) Billing month--Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through the customer's meter.

(5) Business day--As defined by the ERCOT Protocols.

(6) Large non-residential customer--A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).

(7) Large service provider (LSP)--A REP that is designated to provide POLR service pursuant to subsection (j) of this section.

(8) Market-based product - A month-to-month product that is either offered to or matches the rate of a product offered to non-POLR customers of the REP for the same TDU territory and customer class. A month-to-month contract may not contain a termination fee or penalty. For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.

(9) Mass transition--The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

(10) Medium non-residential customer--A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.

(11) POLR area--The service area of a TDU in an area where customer choice is in effect.

(12) POLR provider--A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.

(13) Residential customer--A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.

(14) Transitioned customer--A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.

(15) Small non-residential customer--A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.

(16) Voluntary retail electric provider (VREP)--A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.

(d) POLR service.

(1) There are two types of POLR providers: VREPs and LSPs.

(2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.

(3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.

(4) A POLR provider must offer a basic, standard retail service package to customers it is designated to serve, which is limited to:

(A) Basic firm service; and

(B) Call center facilities available for customer inquiries.

(5) A POLR provider must, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.

(6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) of this section must contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice must also include contact information for the LSP, and the Power to Choose website, and must include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) Standards of service.

(1) An LSP designated to serve a class in a given POLR area must serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (m)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.

(2) A POLR provider must abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section apply. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a) - (b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).

(3) An LSP that has received commission approval to designate one of its affiliates to provide POLR service on behalf of the LSP pursuant to subsection (k) of this section must retain responsibility for the provision of POLR service by the LSP affiliate and remains liable for violations of applicable laws and commission rules and all financial obligations of the LSP affiliate associated with the provisioning of POLR service on its behalf by the LSP affiliate.

(f) Customer information.

(1) The Standard Terms of Service prescribed in subparagraphs (A) - (D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (m)(2) of this section.

(A) Standard Terms of Service, POLR Provider Residential Service:
Figure: 16 TAC §25.43(f)(1)(A) (No change.)

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(B) (No change.)

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(C) (No change.)

(D) Standard Terms of Service, POLR Provider Large Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(D) (No change.)

(2) An LSP providing service under a rate prescribed by subsection (m)(2) of this section must provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service must be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) General description of POLR service provider selection process.

(1) Each REP must provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative will designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission will not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (r) of this section.

(2) POLR providers must serve two-year terms. The initial term for POLR service in areas of the state where retail choice is not in

effect as of the effective date of the rule must be set at the time POLR providers are initially selected in such areas.

(h) REP eligibility to serve as a POLR provider. In each even-numbered year, the commission will determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year.

(1) Each REP must provide information to the commission necessary to establish its eligibility to serve as a POLR provider for the next term. A REP must file, by July 10th of each even-numbered year, by service area, information on the classes of customers it provides service to, and for each customer class, the number of ESI IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. As part of that filing, a REP may request that the commission designate one of its affiliates to provide POLR service on its behalf pursuant to subsection (k) of this section in the event that the REP is designated as an LSP. The independent organization must provide to the commission the total number of ESI ID and total MWh data for each class. Each REP must also provide information on its technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section will not be considered confidential information.

(2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for a particular customer class in a POLR area, unless:

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs));

(B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, is less than 1.0;

(C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the term;

(D) On the date of the commencement of the term, the REP or its predecessor will not have served customers in Texas for at least 18 months;

(E) The REP does not serve the applicable customer class, or does not have an executed delivery service agreement with the service area TDU;

(F) The REP is certificated as an Option 2 REP under §25.107 of this title;

(G) The REP's customers are limited to its own affiliates;

(H) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts out of eligibility for either, or both of the small or medium non-residential customer classes; or

(I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.

(3) For each term, the commission will publish the names of all REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and will provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove the REP's assertion. Commission staff will verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff will notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of POLR providers.

(4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.

(5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff will review the filing, and will request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs will be assigned to a POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.

(i) VREP list. Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission will post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later than July 31, of each even-numbered year unless otherwise determined by the executive director. This filing must include a description of the REP's capabilities to serve additional customers as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, will not be considered confidential information.

(1) A VREP must provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each POLR area, and the number of ESI IDs the REP is willing to serve by customer class and POLR area in each transition event.

(2) A REP that has met the eligibility requirements of subsection (h) of this section and provided the additional information set out in this subsection is eligible for designation as a VREP.

(3) Commission staff will make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff will reassess the REP's eligi-

bility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.

(4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it must provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff will make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of ESI IDs, the request must be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP must continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff will be communicated to ERCOT and must be implemented for the current allocation if possible.

(5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it will request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VREP service. No ESI IDs will be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.

(j) LSPs. This subsection governs the selection and service of REPs as LSPs.

(1) The REPs eligible to serve as LSPs must be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.

(2) In each POLR area, for each customer class, the commission will designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area must be designated as LSPs. Commission staff will designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as an LSP.

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL must be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) must be supplied to commission staff electronically for placement on the commission webpage by the 10th of each month. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL must note that such information is REP-specific.

(4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) of this section must move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

(A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (t)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (t)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product will be provided at a later time, but no later than 14 days before their effective date.

(B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP must move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP must inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.

(5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP must continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee will, with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) Designation of an LSP affiliate to provide POLR service on behalf of an LSP.

(1) An LSP may request the commission designate an LSP affiliate to provide POLR service on behalf of the LSP either with the LSP's filing under subsection (h) of this section or as a separate filing in the current term project. The filing must be made at least 30 days prior to the date when the LSP affiliate is to begin providing POLR service on behalf of the LSP. To be eligible to provide POLR service on behalf of an LSP, the LSP affiliate must be certificated to provide retail electric service; have an executed delivery service agreement with the service area TDU; and meet the requirements of subsection (h)(2) of this section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this section as related to serving customers in the applicable customer class.

(2) The request must include the name and certificate number of the LSP affiliate, information demonstrating the affiliation between the LSP and the LSP affiliate, and a certified agreement from an officer of the LSP affiliate stating that the LSP affiliate agrees to provide POLR service on behalf of the LSP. The request must also in-

clude an affidavit from an officer of the LSP stating that the LSP will be responsible and indemnify any affected parties for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP in the event that the LSP affiliate defaults or otherwise does not fulfill such financial obligations.

(3) Commission staff will make an initial determination of the eligibility of the LSP affiliate to provide POLR service on behalf of an LSP and publish their names. The LSP or LSP affiliate may challenge commission staff's eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to provide POLR service on behalf of the LSP. Commission staff will reassess the LSP affiliate's eligibility and notify the LSP and LSP affiliate of any change in eligibility status within 10 business days of the receipt of the additional documentation. If the LSP or LSP affiliate does not agree with staff's determination of eligibility, either or both may then appeal the determination to the commission through a contested case. The LSP must provide POLR service during the pendency of the contested case.

(4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must provide a copy of the filing to the LSP and the LSP affiliate that are the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it will request that the LSP affiliate demonstrate that it has the capability. The commission staff will review the LSP affiliate's filing and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing POLR service. The LSP affiliate may continue providing POLR service to ESI IDs currently receiving the service during the pendency of the proceeding; however, the LSP must immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to POLR service through a mass transition, during the pendency of the proceeding.

(5) Designation of an affiliate to provide POLR service on behalf of an LSP must not change the number of ESI IDs served or the retail sales in megawatt-hours for the LSP for the reporting period nor does such designation relieve the LSP of its POLR service obligations in the event that the LSP affiliate fails to provide POLR service in accordance with the commission rules.

(6) The designated LSP affiliate must provide POLR service and all reports as required by the commission's rules on behalf of the LSP.

(7) The methodology used by a designated LSP affiliate to calculate POLR rates must be consistent with the methodology used to calculate LSP POLR rates in subsection (m) of this section.

(8) If an LSP affiliate designated to provide POLR service on behalf of an LSP cannot meet or fails to meet the POLR service requirements in applicable laws and Commission rules, the LSP must provide POLR service to any ESI IDs currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.

(9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.

(l) Mass transition of customers to POLR providers. The transfer of customers to POLR providers must be consistent with this subsection.

(1) ERCOT must first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT must use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP must not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT must:

(A) Sort ESI IDs by POLR area;

(B) Sort ESI IDs by customer class;

(C) Sort ESI IDs numerically;

(D) Sort VREPs numerically by randomly generated number; and

(E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP must be assigned an equal number of ESI IDs, up to the number that each VREP indicated it was willing to serve for a given class and POLR area.

(2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT must assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area must be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT must:

(A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;

(B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;

(C) Sort ESI IDs in excess of the allocation to VREPs, numerically;

(D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;

(E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;

(F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and

(G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.

(3) Each mass transition must be treated as a separate event.

(m) Rates applicable to POLR service.

(1) A VREP must provide service to customers using a market-based, month-to-month product. The VREP must use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.

(2) Subparagraphs (A) - (C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) Residential customers. The LSP rate for the residential customer class must be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used, where:

(i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge must be $0.09 per kWh.

(iii) Beginning on the 10th of each month, an LSP energy charge must be the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the applicable load zone for the preceding calendar month (the historical average RTSPP) multiplied by the number of kWhs the customer used during that billing period and further multiplied by 120%. The LSP energy charge must not exceed 160%of the preceding calendar month's LSP energy charge. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

(iv) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

(B) Small and medium non-residential customers. The LSP rate for the small and medium non-residential customer classes must be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used, where:

(i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge must be $0.09 per kWh.

(iii) Beginning on the 10th of each month, LSP energy charge must be the average of the actual RTSPPs for the applicable load zone for the preceding calendar month multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. The LSP energy charge must not exceed 160% of the preceding calendar month's LSP energy charge. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

(iv) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

(C) Large non-residential customers. The LSP rate for the large non-residential customer class must be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used, where:

(i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

(ii) LSP customer charge must be $2,897.00 per month.

(iii) LSP demand charge must be $6.00 per kW, per month.

(iv) LSP energy charge must be the appropriate RT-SPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge must have a floor of $7.25 per MWh.

(3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP must issue refunds to the specific customers who were overcharged.

(4) On a showing of good cause by an affected person, the commission may direct an LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is consistent with prevailing market conditions. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate must be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

(5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection must be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(n) Challenges to customer assignments. A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider must use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU must make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer must then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

(o) Limitation on liability. A POLR provider must make reasonable provisions to provide service under this section to any ESI IDs currently receiving the service and to ESI IDs obtained in a future mass transition or served upon customer request; however, liabilities not excused by reason of force majeure or otherwise must be limited to direct, actual damages.

(1) Neither the customer nor the POLR provider must be liable to the other for consequential, incidental, punitive, exemplary, or

indirect damages. These limitations apply without regard to the cause of any liability or damage.

(2) In no event will ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.

(p) REP obligations in a transition of customers to POLR service.

(1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.

(2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.

(3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.

(4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.

(5) A defaulting REP whose customers are subject to a mass transition event must return the customers' deposits within seven calendar days of the initiation of the transition.

(6) ERCOT must create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, must be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT must be tested on a periodic basis. Each REP must submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission will establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT must notify the commission if any REP fails to comply with the reporting requirements in this subsection.

(7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section must be treated as confidential and must only be used for mass transition related purposes.

(8) Information from the TDU and ERCOT to the POLR providers must be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section must not constitute a violation of the customer protection rules that address confidentiality.

(9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider must begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider must not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it must determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider must not request a deposit from the residential customer.

(A) At the time of a mass transition, the executive director or staff designated by the executive director will distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. For a REP that has obtained a current list from the Low Income List Administrator (LILA) that identifies low-income customers, these funds must first be used to provide deposit payment assistance for that REP's transitioned low-income customers. The Executive Director or staff designee will, at the time of a transition event, determine the reasonable deposit amount up to $400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above $400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, must satisfy in full the customers' initial deposit obligation to the VREP or LSP.

(B) For a REP that has obtained a current list from the LILA that identifies low-income customers, the Executive Director or the staff designee will distribute available proceeds pursuant to §25.107(f)(6) of this title to the VREPs proportionate to the number of customers they received in the mass transition, who at the time of the mass transition were identified as low-income customers by the current LILA list, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds must be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers as identified in the LILA list that are allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

(C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference must be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of

an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.

(10) On the occurrence of one or more of the following events, ERCOT must initiate a mass transition to POLR providers, of all of the customers served by a REP:

(A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;

(B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;

(C) Issuance of a commission order de-certifying a REP;

(D) Issuance of a commission order requiring a mass transition to POLR providers;

(E) Issuance of a judicial order requiring a mass transition to POLR providers; and

(F) At the request of a REP, for the mass transition of all of that REP's customers.

(11) A REP must not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.

(12) ERCOT may provide procedures for the mass transition process, consistent with this section.

(13) A mass transition under this section must not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch must be made on the next available switch date.

(14) ERCOT must identify customers who are mass transitioned for a period of 60 calendar days. The identification must terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions must be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection.

(15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.

(16) In a mass transition event, the ERCOT initiated transactions must request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider must not be considered a break in a series of consecutive months of estimates, but must not be considered a month in a series of consecutive estimates performed by the TDU. A TDU must create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset must be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU must not bill as a discretionary charge, the costs included in this regulatory asset, which must consist of the following:

(A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and

(B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.

(17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU must perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU must calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU must promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(q) Termination of POLR service provider status.

(1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:

(A) If the POLR provider fails to maintain REP certification;

(B) If the POLR provider fails to provide service in a manner consistent with this section;

(C) The POLR provider fails to maintain appropriate financial qualifications; or

(D) For other good cause.

(2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee will, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.

(3) At the end of the POLR service term, the outgoing LSP must continue to serve customers who have not selected another REP.

(r) Electric cooperative delegation of authority. An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission will, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions apply:

(1) The board of directors must provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority must be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;

(3) The delegation of authority must be for a minimum period corresponding to the period for which the solicitation must be made;

(4) The electric cooperative wishing to delegate its authority to designate a continuous provider must also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and

(5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission must automatically reject the delegation of authority.

(s) Reporting requirements. Each LSP that serves customers under a rate prescribed by subsection (m)(2) of this section must file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report must be filed within 30 calendar days of the end of the quarter.

(1) For each month of the reporting quarter, each LSP must report the total number of new customers acquired by the LSP under this section and the following information regarding these customers:

(A) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;

(B) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(C) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and

(D) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (B) or (C) of this paragraph.

(2) For each month of the reporting quarter each LSP must report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;

(B) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(C) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and

(D) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (A) or (B) of this paragraph.

(3) For the entirety of the reporting quarter, each LSP must report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.

(t) Notice of transition to POLR service to customers. When a customer is moved to POLR service, the customer must be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice must be provided within two days of the time ERCOT and the transitioning REP know that the customer must be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it must provide notice as soon as practicable. The POLR provider must provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and must provide the notice to transitioning customers as soon as practicable. The POLR provider must email the notice to the commission staff members designated for receipt of the notice.

(1) ERCOT notice methods must include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT must notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) of this section. ERCOT must study the effectiveness of the notice methods used and report the results to the commission.

(2) Notice by the REP from which the customer is transferred must include:

(A) The reason for the transition;

(B) A contact number for the REP;

(C) A statement that the customer will receive a separate notice from the POLR provider that must disclose the date the POLR provider must begin serving the customer;

(D) Either the customer's deposit plus accrued interest, or a statement that the deposit must be returned within seven days of the transition;

(E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);

(G) If applicable, a description of the activities that the REP will use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and

(H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(3) Notice by the POLR provider must include:

(A) The date the POLR provider began or will begin serving the customer and a contact number for the POLR provider;

(B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) of this section, a statement that the price is generally higher than available competitive prices;

(C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;

(D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(E) The applicable Terms of Service and Electricity Facts Label (EFL); and

(F) For residential customers that are served by an LSP under a rate prescribed by subsection (m)(2) of this section, a notice to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(u) Market notice of transition to POLR service. ERCOT must notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The notification must include the exiting REP's name, total number of ESI IDs, and estimated load.

(v) Disconnection by a POLR provider. The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section must begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.

(w) Deposit payment assistance.

(1) The commission staff designee will distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

(2) The executive director or staff designee will use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:

(A) a list of the ESI IDs identified by the LILA that have been or will be transitioned to the applicable POLR (if available); and

(B) the amount of deposit payment assistance that will be provided on behalf of a POLR customer identified by the LILA (if available).

(3) Amounts credited as deposit payment assistance pursuant to this section must be refunded to the customer in accordance with §25.478(j) of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204366

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 23, 2022
Proposal publication date: September 30, 2022
For further information, please call: (512) 936-7322

♦ ♦ ♦

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the Electricians program, without changes to the proposed text as published in the June 17, 2022, issue of the *Texas Register* (47 TexReg 3522). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 73 implement Texas Occupations Code, Chapter 1305, Electricians.

Pursuant to Occupations Code, Chapter 1305, §1305.101(a)(2), the Commission is required to adopt the National Electrical Code (NEC) every three years "as the electrical code for the state." The Commission has adopted the 2020 NEC in its entirety by rule at 16 TAC, Chapter 73, §73.100, Technical Requirements. Section 90.4 of the 2020 NEC authorizes the Department to waive specific code requirements when doing so will not have a negative impact on safety.

Section 210.8(F) of the NEC requires certain outdoor outlets to have ground-fault circuit-interrupter (GFCI) protection. An incompatibility between most GFCI products on the market and common air-conditioning and heating equipment has resulted in that equipment failing by persistently tripping circuit breakers. Recent rulemaking by the Department has delayed the implementation of Section 210.8(F) until January 1, 2023, in order to allow equipment manufacturers to correct this incompatibility. *See* 16 TAC §73.100(b). However, because this incompatibility will not be resolved by January 1, 2023, the adopted rule will exclude Section 210.8(F) from the Department's implementation of the 2020 NEC altogether.

The summer heat and winter cold pose a serious threat to Texas residents whose air conditioning or heating systems have failed or are malfunctioning. Adopting the proposed rule would help keep Texas residents safe by ensuring installed air conditioning and heating systems are not subject to failure due to equipment incompatibility. Additionally, the Department's technical experts have confirmed that adopting the proposed rule would not have a negative impact on safety.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §73.100(b) to state that compliance with Section 210.8(F) of the 2020 NEC is not required.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 17, 2022, issue of the *Texas Register*

(47 TexReg 3522). The public comment period closed on July 18, 2022. The Department received comments from four interested parties on the proposed rules. The public comments are summarized below.

Comment: Two commenters expressed their support for the proposed rule as published.

Department Response: The Department appreciates these comments.

Comment: One commenter stated that the Department was "moving in the right direction" by adopting the proposed rules. The commenter stated that requiring GFCI protection for air conditioning equipment is a bad requirement that is not practical and that imposes extreme costs.

Department Response: The Department appreciates the comment.

Comment: One commenter stated simply, "Keep the rule in place."

Department Response: The Department was unable to determine whether the commenter was in favor of or against adopting the proposed rule. The Department appreciates the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Electrical Safety and Licensing Advisory Board met on August 25, 2022, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on October 18, 2022, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204397
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 31, 2022
Proposal publication date: June 17, 2022
For further information, please call: (512) 475-4879

♦ ♦ ♦

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.100, regarding the Air Conditioning and Refrigeration Contractors program, without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3864). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 75 implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

Pursuant to 16 TAC, Chapter 75, §75.100(a)(4), electrical work performed by air conditioning and refrigeration contractors must be performed in accordance with the 2020 National Electrical Code (NEC). Section 90.4 of the 2020 NEC authorizes the Department to waive specific code requirements when doing so will not have a negative impact on safety.

Section 210.8(F) of the NEC requires certain outdoor outlets to have ground-fault circuit-interrupter (GFCI) protection. An incompatibility between most GFCI products on the market and common air-conditioning and heating equipment has resulted in that equipment failing by persistently tripping circuit breakers. Recent rulemaking by the Department has delayed the implementation of Section 210.8(F) until January 1, 2023, in order to allow equipment manufacturers to correct this incompatibility. *See* 16 TAC §75.100(a)(5). However, because this incompatibility will not be resolved by January 1, 2023, the proposed rule will exclude Section 210.8(F) from the Department's implementation of the 2020 NEC altogether.

The summer heat and winter cold pose a serious threat to Texas residents whose air conditioning or systems have failed or are malfunctioning. Adopting the proposed rule would help keep Texas residents safe by ensuring installed air conditioning and heating systems are not subject to failure due to equipment incompatibility. Additionally, the Department's technical experts have confirmed that adopting the proposed rule would not have a negative impact on safety.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §75.100(a)(5) to state that compliance with Section 210.8(F) of the 2020 NEC is not required.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3864). The public comment period closed on August 8, 2022. The Department received comments from twelve interested parties on the proposed rules. The public comments are summarized below.

Comment: Ten commenters expressed their support for the proposed rule as published.

Department Response: The Department appreciates these comments.

Comment: One commenter stated that Texas should have a law requiring all residences and businesses to have working air conditioning.

Department Response: The Department appreciates the comment, but is not empowered to make such a change. Only the Texas Legislature could impose such a requirement.

Comment: One commenter stated that GFCI protection makes installation of air conditioning equipment more costly, and should not be required if the equipment is installed correctly.

Department Response: The Department appreciates the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Air Conditioning and Refrigeration Contractors Advisory Board met on August 24, 2022, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on October 18, 2022, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204396
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 31, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 475-4879

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.3

The Texas Board of Chiropractic Examiners (Board) adopts amended 22 TAC §72.3 (Qualifications) without changes as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5391). The organization of the accrediting entities for chiropractic schools recognized by the Board for licensing purposes has changed; the amendment updates that change. The rule will not be republished.

The Board received no comments about the proposed amendment.

The amended rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §§201.302 and 201.303, which authorizes the Board to recognize national chiropractic accreditation organizations.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204384
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 24, 2022
Proposal publication date: September 9, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

22 TAC §72.5

The Texas Board of Chiropractic Examiners (Board) adopts amended 22 TAC §72.5 (Approved Schools and Colleges) without changes as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5392). The rule will not be republished. The organization of the accrediting entities for chiropractic schools recognized by the Board for licensing purposes has changed; the amendment updates that change.

The Board received no comments about the proposed amendment.

The amended rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §§201.302 and 201.303, which authorizes the Board to recognize national chiropractic accreditation organizations.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204385
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 24, 2022
Proposal publication date: September 9, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

CHAPTER 75. BUSINESS PRACTICES

22 TAC §75.10

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §75.10 (Chiropractic Health Requirements) with change as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5393). The rule will be republished. This rule reiterates the current statutory requirements for chiropractors providing telehealth services found in Texas Occupations Code Chapter 111 (Telemedicine, Teledentistry, and Telehealth). The new rule also adds a requirement that licensed chiropractors provide their patients with access to copies of their Board-issued license and the Board-required mandatory notice to the public. A chiropractor is already required to provide access to those two documents (found in 22 TAC §75.6 and §75.7) to patients during live face-to-face visits; the proposed rule merely extends that requirement to telehealth visits.

The Board received no comments about the rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §111.007, which authorizes the Board to adopt rules pertaining to the standard of care for telehealth services.

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

§75.10. Chiropractic Telehealth Requirements

(a) A licensee may provide chiropractic telehealth services to patients in compliance with this rule.

(b) Before providing chiropractic telehealth services, a licensee shall obtain a patient's written informed consent.

(c) A licensee shall use the same standard of care when providing chiropractic telehealth services to a patient as the licensee would in an in-person setting.

(d) When providing chiropractic telehealth services, a licensee shall ensure the confidentiality of a patient's clinical information as required by law.

(e) A licensee shall provide access to a copy of the licensee's license and the Board's mandatory notice to the public form (as found in §75.6(b) of this chapter (relating to Mandatory Notice to Public)) each time the licensee provides chiropractic telehealth services to a patient.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204386
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 24, 2022
Proposal publication date: September 9, 2022
For further information, please call: (512) 305-6700

♦ ♦ ♦

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.2

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.2, concerning licensure by examination for dentists. The amendment updates the language to clarify that clinical examinations must use live patients or hands-on simulations. The amendment reflects the merger of the regional examining board CDCA-WREB-CITA, and the name change of the regional examining board SRTA. The amendment also changes the time period the Board will accept examination results. This rule is adopted with no changes to the proposed text published in the September 30, 2022 issue of the *Texas Register* (47 TexReg 6377), and will not be republished.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. TDA states the rule is consistent with TDA policy supporting clinical dental licensure examination formats that are manikin-based, computer-based, or live-patient based. All examination formats must be psychometrically valid and reliable measurements of a dentist licensure applicant's clinical skills in general dentistry. No changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204408
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: November 24, 2022
Proposal publication date: September 30, 2022
For further information, please call: (512) 305-8910

♦ ♦ ♦

22 TAC §101.3

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.3, concerning dental licensure by credentials. The amendment updates the language to clarify that clinical examinations must use live patients or hands-on simulations. This rule is adopted with no changes to the proposed text published in the September 30, 2022 issue of the *Texas Register* (47 TexReg 6379), and will not be republished.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. TDA states the rule is consistent with TDA policy supporting clinical dental licensure examination formats that are manikin-based, computer-based, or live-patient based. All examination formats must be psychometrically valid and reliable measurements of a dentist licensure applicant's clinical skills in general dentistry. No changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204409
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: November 24, 2022
Proposal publication date: September 30, 2022
For further information, please call: (512) 305-8910

♦ ♦ ♦

CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.2

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §103.2, concerning licensure by examination for dental hygienists. The amendment updates the language to clarify that clinical examinations must use live patients or hands-on simulations. The amendment reflects the merger of the regional examining board CDCA-WREB-CITA, and the name change of the regional examining board SRTA. The amendment also changes the time period the Board will accept examination results. This rule is adopted with changes to the proposed text published in the September 30, 2022 issue of the *Texas Register* (47 TexReg 6380), and will be republished. The change to the published text is to update Southern Regional Testing Agency to States Resources for Testing and Assessments due to its name change.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

§103.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by examination must present proof that the applicant has taken and passed the appropriate live patient or hands-on simulation clinical examination administered by a regional examining board designated by the Board.

(b) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the Board as of the effective dates shown:

(A) The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), August 1, 2022;

(B) Central Regional Dental Testing Service (CRDTS), January 1, 2002; and

(C) States Resources for Testing and Assessments (SRTA), January 1, 2005.

(2) Examination results will be accepted for seven years from the date of the examination.

(c) Remediation.

(1) If an applicant for Texas dental hygienist licensure fails three dental hygiene live patient or hands-on simulation clinical examination attempts, the applicant must complete 40 hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another live patient or hands-on simulation clinical examination.

(2) If an applicant fails four or more dental hygiene live patient or hands-on simulation clinical examination attempts, the applicant must complete 150 hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another live patient or hands-on simulation clinical examination.

(3) All programs of clinical remediation require prior approval by the Board. Applicants will be responsible for locating, identifying and obtaining approval from the Board prior to registration for any program.

(4) Re-examination must be accomplished within 18 months following the date the Board approves a remediation program for the applicant.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204410
Lauren Studdard
General Counsel
Effective date: November 24, 2022
Proposal publication date: September 30, 2022
For further information, please call: (512) 305-8910

♦ ♦ ♦

22 TAC §103.3

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §103.3, concerning dental hygiene licensure by credentials. The amendment updates the language to clarify that clinical examinations must use live patients or hands-on simulations. This rule is adopted with no changes to the proposed text published in the September 30, 2022 issue of the *Texas Register* (47 TexReg 6381), and will not be republished.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204411
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: November 24, 2022
Proposal publication date: September 30, 2022
For further information, please call: (512) 305-8910

♦ ♦ ♦

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1, §361.13

The Texas State Board of Plumbing Examiners (Board) adopts the amendments to 22 Texas Administrative Code §361.1, relating to Definitions, and §361.13, relating to Board Committees and Enforcement Committee. The amendments to §361.1 and §361.13 are adopted without changes to the proposed text published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3870). These rules will not be republished.

REASONED JUSTIFICATION OF ADOPTED AMENDMENTS

The Texas Occupations Code, Chapter 1301 (Plumbing License Law or PLL) was amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021. The adopted rules implement statutory changes made by HB 636.

The amendment to §361.1(16) amends the definition of Continuing Professional Education by removing a reference to "Board" approval and eliminating unnecessary language. HB 636 transferred the responsibility of continuing education approval from the Board to the Executive Director.

The amendment to §361.1(21)(E)(iv) amends the definition of Field Representative by eliminating the responsibly of a Field Representative to issue citations. HB 636 eliminated the authority of Field Representatives to issue citations.

The amendment to §361.1(47)(E) amends the definition of a Responsible Master Plumber (RMP) by eliminating the requirement for a RMP to complete and submit a certificate of training as mandated by HB 636.

The amendment to §361.1(52) amends the definition of the Tradesman Plumber-Limited Licensee to include the successful completion of a career and technology program as a qualifying component for licensure as implemented by HB 636.

The amendment to §361.13 eliminates reference to the Enforcement Committee and the requirement that committee members be a member of the Board. HB 636 eliminated the Enforcement Committee and the requirement that committee members be board members.

COMMENTS

No comments were received regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the Plumbing License Law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204360
Lynn Latombe
General Counsel
Texas State Board of Plumbing Examiners
Effective date: November 23, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 936-5216

♦ ♦ ♦

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §§365.1, 365.5, 365.7, 365.8, 365.14, 365.15, 365.19 - 365.25

The Texas State Board of Plumbing Examiners (Board) adopts the amendments to 22 Texas Administrative Code §365.1, relating to License, Endorsement and Registration Categories; Scope of Work Permitted, §365.5, relating to Renewal of License, Registration or Endorsement, §365.7, relating to Duplicate Pocket Card, §365.8, relating to Change of Name, Address, or Employment, §365.14, relating to Course Year for Continuing Professional Education and Training Programs, §365.15, relating to Curriculum Minimum Standards, §365.19, relating to Course Providers of Continuing Professional Education Programs, §365.20, relating to Course Instructors for Continuing Professional Education Programs, §365.21, relating to Continuing Professional Education Programs for the Medical Gas Piping Installation Endorsement, §365.22, relating to Licensing Procedures for Military Spouses, §365.23, relating to Transfer of License, §365.24, relating to Continuing Education and Training Exemptions, and a new rule at §365.25, relating to Temporary License.

The amendments to §§365.1, 365.5, 365.7, 365.8, 365.14, 365.15 and 365.19 - 365.24 are adopted without changes to the proposed text published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3870.) These rules will not be republished.

The new rule at 22 Texas Administrative Code §365.25, relating to Temporary License is adopted with changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3870) and will therefore be republished.

REASONED JUSTIFICATION OF ADOPTED AMENDMENTS

The Texas Occupations Code, Chapter 1301 (Plumbing License Law or PLL) was amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021. The adopted rules implement statutory changes made by HB 636.

The amendment to §365.1 eliminates unnecessary language and references to simplify the rule and make it easier to read.

The amendment to §365.5 rewords and restructures the requirements for renewal in an effort to simplify it and make it easier to read.

The amendment to §365.7 eliminates an unnecessary reference.

The amendment to §365.8 consolidates subsection (d) into (a) to show a licensee or registrant must inform the Board of a change of physical address and legal name change. It also makes a new requirement that the Board be notified of a change in email address.

The amendment to §365.14 changes the rule heading to "Continuing Professional Education and Training Requirements." It further adds "as applicable" to subsection (c) to clarify that continuing education and training can be taken in person, via correspondence, or virtually.

The amendment to §365.15 eliminates references to a "publisher" of course material. The Board earlier repealed regulation of publishers. Further language is eliminated to streamline the rule and clarify the Executive Director will approve both continuing professional education and training courses. Lastly, a clarification in (c) shows that course material is approved for two years from their stated effective date, or the date they are approved, whichever is later.

The amendment to §365.19 eliminates reference to Board approval. Under HB 636, the Executive Director facilitates the administrative approval of courses and instructors. Overly proscriptive rules regarding class format, delivery, and class size are eliminated as was recommended by the Sunset Commission. Courses and training segments are required to be at least one hour in length. Providers may incorporate materials or presentations by manufacturing vendors but only educational and informative portions will be given credit. If a course is cancelled, the Provider shall offer to refund or reschedule the course. The provider will furnish a certificate of completion to the student within three business days of successful course completion.

The amendment to §365.20 sets the minimum qualifications for instructors of continuing education courses and training programs, eliminates overly proscriptive language as recommended by the Sunset Commission and facilitates the standards under which the Executive Director will approve instructors as mandated by HB 636. An instructor must be a journeyman, master, or plumbing inspector in good standing. An instructor teaching an endorsement course, must hold that endorsement. Instructors must teach approved material and report course completion with 48 hours after the course ends.

The amendment to §365.21 adds to the current rule that provides that continuing education for a medial gas piping endorsement must have two hours of CPE. The rule proposal amends the rule to include that the successful completion of a national certification in medical gas may also satisfy the continuing education requirement for that endorsement. Further changes eliminate the requirement for a bound, physical copy of NFPA 99, as the NFPA is available and used digitally. Further language is eliminated to remove unnecessary language and references.

The amendment to §365.22 adopts rules providing for licensing military service members, military veterans, and military spouses.

The amendment to §365.23 reflects the statutory authority to allow for the transfer of a license held for 35 consecutive years. §365.23(a) is inconsistent with statute and is eliminated. The remaining changes simply eliminate unnecessary language and reference to improve readability.

The amendment to §365.24 allows instructors who teach the alternative option for becoming a Tradesman-Limited Plumber at a high school or institute of higher education the ability to renew their license by completing six hours of continuing education at least every three years, if they provide at least 18 hours of instruction annually. This provision facilitates the requirement in HB 636 which amended 1301.407(g).

The new rule at §365.25 creates a rule to support the temporary, non-renewable, 30-day licenses provided in HB 636. This rule shows that this license may be granted in conditions of disaster as declared by the Governor or an event determined by the Executive Director.

COMMENTS

No comments were received regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the Plumbing License Law.

§365.25. Temporary License.

(a) The agency may issue temporary licenses to qualified, out-of-state plumbing professionals to work in Texas if the Governor of Texas issues a disaster proclamation, or in an event determined by the Executive Director;

(b) Temporary license holders may only engage in the activities authorized by the license type during the disaster recovery period and only in the designated disaster area; and

(c) An emergency license expires 30 days after issuance.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204361
Lynn Latombe
General Counsel
Texas State Board of Plumbing Examiners
Effective date: November 23, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 936-5216

♦ ♦ ♦

PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §781.304

The Texas Behavioral Health Executive Council adopts amendments to §781.304, relating to Relationships with Clients. Sec-

tion 781.304 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4614) and will not be republished.

Reasoned Justification.

The adopted amendment removes duplicative language that is currently stated in §781.310, pertaining to billing and financial relationships.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204368
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.401

The Texas Behavioral Health Executive Council adopts amendments to §781.401, relating to Qualifications for Licensure. Section 781.401 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4616) and will not be republished.

Reasoned Justification.

The adopted amendment removes the requirements that supervised experience must be obtained within five years immediately preceding the date of application for specialty recognition.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that the 3000 hours, and 100 supervision hours, over 24-48 months does not meet requirements consistent in other states.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced support for the deletion of the five year requirement, but then voiced concern that the opportunity created by this change is defeated by the requirement that the 100 supervision hours must be with a Council approved supervisor. The commenter opined that this will not help applicants that previously completed their 100 supervision hours with a Board approved supervisor, since the Council was not formed until 2019, and asked that the Council approved supervisor part of this rule be deleted.

Agency Response.

The commenter's concerns regarding the 24-48 month requirement in this rule were not part of the proposed rule amendments. This proposed change removed the requirement that supervised experience must be obtained within five years immediately preceding the date of application for specialty recognition. Therefore, the Executive Counsel declines to make any requested changes to the 24-48 month requirement in this rule adoption because it would be beyond the scope of this rule proposal. Additionally, the Executive Council declines to delete the require-

ment that 100 supervision hours must be completed by a Council approved supervisor, because the Executive Council will accept previous supervised experience hours completed under a former Board approved supervisor. When H.B. 1501, 86th Leg., R.S. (2019), created the Executive Council it consolidated the authority to issue licenses, rules, and regulate the professions for the underlying Boards to the Executive Council. Therefore, when a license is issued or status change granted, such as supervisor status, it is now done so by the Executive Council with input from the member Boards, see 22 Texas Administrative Code §882.20. The supervisor status for social workers has not changed, only the government entity issuing the supervisor stats has, so if the required 100 supervision hours were completed under a previous Board approved supervisor they will still qualify, just as if they are currently completed under a Council approved supervisor.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204369
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.405

The Texas Behavioral Health Executive Council adopts amendments to §781.405, relating to Application for Licensure. Section 781.405 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4618) and will not be republished.

Reasoned Justification.

The adopted amendment is made to correct a typographical error.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education require-

ments for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204370
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

22 TAC §781.406

The Texas Behavioral Health Executive Council adopts amendments to §781.406, relating to Required Documentation of Qualifications for Licensure. Section 781.406 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4619) and will not be republished.

Reasoned Justification.

The adopted amendment removes the requirements that supervised experience must be obtained within five years immediately preceding the date of application.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced support for this rule change, the commenter believes this change will be beneficial for many applicants and will now take into account the numerous factors that could have previously prevented qualified applicants from completing their supervised experience and submitting an application within five years.

Agency Response.

The Executive Council thanks the commenter for the supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204371
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §781.803

The Texas Behavioral Health Executive Council adopts amendments to §781.803, relating to Severity Levels. Section 781.803 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4620) and will not be republished.

Reasoned Justification.

This amended rule is adopted to make the rule clearer. The severity levels have been simplified by combining previous levels 2 and 3, extended suspension and moderate suspension respectively, into a suspension for any amount of time. Additionally, the maximum penalty amount for each level has been raised to $5,000 to align with Occupations Code Section 507.352.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204373
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

22 TAC §781.805

The Texas Behavioral Health Executive Council adopts the repeal of §781.805, relating to Schedule of Sanctions. The repeal of §781.805 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4622) and will not be republished.

Reasoned Justification.

The repeal of this rule is necessary because this rule is being replaced with a new schedule of sanctions rule, which is adopted elsewhere in this same issue of the *Texas Register.*

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal of the rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts the repeal of this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to

adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved the repeal of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts the repeal of this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the repeal of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt the repeal of this rule.

Lastly, the Executive Council adopts the repeal of this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204374
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §781.805

The Texas Behavioral Health Executive Council adopts new §781.805, relating to Schedule of Sanctions. Section 781.805 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4623) and will not be republished.

Reasoned Justification.

This new rule has been adopted to make the schedule of sanction easier to use. Amendments to §781.404 were previously adopted and amendments to §781.803 are being adopted in this issue of the *Texas Register,* so corresponding amendments to this rule have been made to align with those adopted changes. There are no additional substantive changes to the schedule being adopted.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204376
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §801.2

The Texas Behavioral Health Executive Council adopts amended §801.2, relating to Definitions. Section 801.2 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4624) and will not be republished.

Reasoned Justification.

The adopted amendment adds a definition for direct clinical services to couples or family for the purpose of providing greater clarity in the rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opposed this rule change because the commenter believed this rule change could result in applicants becoming licensed as an LMFT without working clinically with any, or few, intact families or couples. The commenter requested the rule be amended to place a limit or cap on the number of these hours that could be counted towards licensure.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced support for this rule, the commenter believed that residential groups and treatment groups should be included as part of the definition of direct clinical services to couples or family. The commenter believed that youths in detention who are in group counseling are treated as members of a system, which is much different than group counseling for members in the community. Therefore, the commenter supports the inclusion of these groups into the proposed definition for direct clinical services to couples or family.

Agency Response.

The Executive Council declines to make changes to the rule as requested. The services provided under this definition will always be systemic and the Texas State Board of Examiners of Marriage and Family Therapists did not want to limit these systemic hours as the commenter requested. Further, the Board felt placing numerical caps or limits on the types of systemic hours would create a more complicated licensing requirement than would be necessary to ensure public protection and that competent providers are licensed. The Executive Council agreed with the Board's recommendation not to amend this rule as requested by the commenter. The Executive Council thanks the commenter for the supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204378
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 3, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §801.43

The Texas Behavioral Health Executive Council adopts amendments to §801.43, relating to Professional Representation. Section 801.43 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4626) and will not be republished.

Reasoned Justification.

The adopted amendment clarifies how supervisees must represent themselves to clients and the public.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204379
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §801.302

The Texas Behavioral Health Executive Council adopts amended §801.302, relating to Severity Level and Sanction Guide. Section 801.302 is adopted with changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4628) and will be republished. These changes further clarify and streamline the rule; references to the maximum penalty amounts have been removed from paragraphs (1) and (2) and have been consolidated under paragraph (5) which specifically covers the assessment of administrative penalties.

Reasoned Justification.

The adopted rule amendments are adopted, with changes, to make the rule clearer and to simplify the guide by combining levels 2 and 3 into a suspension for any amount of time. Additionally, the possible penalty amount for all levels has been clarified, to match Section 507.352 of the Occupations Code.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§801.302. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in council rules, 22 Texas Administrative Code, §884.20 (relating to Disciplinary Guidelines and General Schedule of Sanctions).

(1) Level One--Revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee or cause or pose a high degree of harm to the public or may require severe punishment as a deterrent to the licensee, or other licensees.

(2) Level Two--Suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require suspension of licensure for a period of time.

(3) Level Three--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(4) Level Four--Reprimand. These violations involve inadvertent or relatively minor misconduct or rule violations not directly involving the health, safety and welfare of the public.

(5) An administrative penalty may be assessed for any violation, in lieu of, or in addition to, other disciplinary actions. A maximum amount of $5,000 may be imposed for each violation, each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204380
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

22 TAC §801.305

The Texas Behavioral Health Executive Council adopts the repeal of §801.305, relating to Schedule of Sanctions. The repeal of §801.305 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4629) and will not be republished.

Reasoned Justification.

The adopted repeal of this rule is necessary because this rule is being replaced with a new schedule of sanctions rule, which is adopted elsewhere in this same issue of the *Texas Register.*

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal of the rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts the repeal of this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved the repeal of this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts the repeal of this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the repeal of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt the repeal of this rule.

Lastly, the Executive Council also adopts the repeal of this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204381
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

22 TAC §801.305

The Texas Behavioral Health Executive Council adopts new §801.305, relating to Schedule of Sanctions. Section 801.305 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4630) and will not be republished.

Reasoned Justification.

This new rule has been adopted to make the format of the schedule of sanctions easier to use and standardized between the other behavioral health boards. There are a few substantive changes being adopted to the schedule currently in effect. Rules that are currently split between an extended and moderate suspension are proposed to be a Level 2 suspension to align with the adopted changes to §801.302, which combines the two suspension levels into one, for example see §§801.44(t) and (v), 801.47, and 801.57(e). Additionally, a few typographical errors are being corrected with this adopted change, the sanction for 801.47 is now split into subsections (a) and (b) which are a suspension and revocation respectively. And §801.44(s) - (v) have been updated to correspond more accurately to the correct rule and sanction. Lastly, in the April 22, 2022, edition of the *Texas Register,* §801.143(h) - (l) were adopted to be amended so corresponding amendments have been made to match those previously proposed changes.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov;t Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204382
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council adopts amendments to §885.1, relating to Executive Council Fees. Section 885.1 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4632) and will not be republished.

Reasoned Justification.

On October 8, 2019, Governor Greg Abbott sent a letter to all Texas State agency heads instructing agencies to reform occupational-licensing rules in several areas. One such area the Governor focused on was the reduction of fees, specifically the Governor instructed agencies to develop and implement plans to reduce license applications fees to 75% or less of the national average for equivalent or comparable occupations, whenever possible. This adopted amendment is intended to do just that, all application and renewal licensing fees have either been reduced to 75% of the national average or, if the fee was already below 75% of the national average, then the fee stayed the same. The current fee schedule will remain in effect until September 1, 2023, on this date these new fee changes are scheduled to take effect. Application fees are adopted to be reduced for the following license types: LCSW by $9.00, LPC and LPC-Associate by $56.00, LPA by $189.00, LP by $426.00, and LSSP by $36.00. Renewal fees are adopted to be reduced for the following license types: LBSW and LMSW by $33.00, LCSW and LMSW-AP by $55.00, and LP by $129.00. Additionally, the $4.00 Texas.gov fee is adopted to be removed from the temporary license application for social workers and the application for criminal history evaluation. The implementation of these fee changes is scheduled to take effect on September 1, 2023, to provide all interested parties the opportunity to comment on these changes, and based upon future comments and information gathered these fee changes may be subject to future amendments.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts this rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204364
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Counsel
Effective date: November 23, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 305-7706

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING

The Texas Health and Human Services Commission (HHSC) adopts amendments to §139.2, concerning Definitions; §139.4, concerning Monthly Reporting Requirements for All Abortions Performed or Induced; §139.5, concerning Additional Report-

ing Requirements; §139.32, concerning License Denial, Suspension, Probation, or Revocation; §139.50, concerning Disclosure Requirements; §139.52, concerning Patient Education/Information Services; §139.53, concerning Medical and Clinical Services; and §139.55, concerning Clinical Records.

The amendments to §§139.2, 139.4, 139.5, and 139.53 are adopted with changes to the proposed text as published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2694). These rules will be republished.

The amendments to §§139.32, 139.50, 139.52, and 139.55 are adopted without changes to the proposed text as published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2694). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Senate Bill (S.B.) 8, 87th Legislature, 2021, Regular Session, and S.B. 4, 87th Legislature, 2021, Second Called Session. S.B. 8 requires physicians who perform an abortion on or after September 1, 2021, to maintain certain documentation regarding the reasons for an abortion and prohibits HHSC from enforcing Texas Health and Safety Code (HSC) Chapter 171, Subchapter H, concerning Detection of Fetal Heartbeat. S.B. 4 amends abortion complication reporting requirements and requirements for providing abortion-inducing drugs for abortions performed on or after December 2, 2021. The amendments are also necessary to remove outdated information and ensure consistency with current HHSC terminology.

COMMENTS

The 31-day comment period ended June 6, 2022. During this period, HHSC received comments regarding the proposed rules from three commenters, including Texas Medical Association (TMA), Parkland Health, and an individual commenter. A summary of comments and HHSC's responses follow.

Comment: TMA commented the public could interpret the proposed amendment to §139.2(1), which removes language from the abortion definition clarifying only a physician licensed in Texas may perform or induce an abortion, to permit individuals who are not licensed Texas physicians to perform or induce an abortion. TMA suggested amending §139.53 to add language clarifying only a physician licensed in Texas may perform or induce an abortion.

Response: HHSC revised §139.53(b) by adding §139.53(b)(8) to clarify only a physician may perform a medical abortion. HHSC also added the word "surgical" to §139.53(a)(7) to increase clarity and consistency with §139.53(b)(8).

Comment: TMA suggested amending the abortion-inducing drug definition under §139.2(4) to use the same language as HSC §171.061(2) because the proposed rule omits part of the statutory definition. TMA expressed their concern with omitting a portion of the statutory definition and stated doing so may lead the public to assume an abortion-inducing drug has a different meaning in Chapter 139 than under HSC §171.061(2).

Response: HHSC revised §139.2(4) to align with HSC §171.061(2).

Comment: Parkland Health stated the medical abortion definition under §139.2(35) differs from the definition in HSC §171.061(5) and that the difference may cause confusion regarding when using a particular medication constitutes a potentially prohibited medical abortion.

Response: HHSC revised §139.2(35) to align with HSC §171.061(5).

Comment: TMA expressed concern with the proposed amendments to §139.4(c), which replace the list of 16 categories of information required for monthly abortion reporting with language requiring the monthly report to include the information HHSC requires through the agency's secure electronic reporting system in accordance with HSC Chapters 171 and 245. TMA stated removing the list of specific information a facility must report may cause confusion among providers regarding what information they must report because HSC Chapters 171 and 245 contain multiple requirements. TMA suggested revising §139.4(c) to include the list of specific reporting requirements.

Response: HHSC revised §139.4(c) to include the list of the 16 categories of information required for monthly abortion reporting currently listed under §139.4(c) to increase clarity and added four additional categories regarding the required information facilities must report monthly and to increase consistency with S.B. 8's amendment to HSC §245.011.

Comment: Parkland Health commented on §139.4(f), stating the language proposes a single method of filing required reports and urged HHSC to adopt a backup system allowing providers to report outside of the primary electronic reporting system so providers can comply with the reporting requirements when the electronic system is unavailable due to technical issues. Parkland Health suggested HHSC revise §139.4(f) to include the option to submit reports by certified mail, as permitted under current rule, or by receipted courier.

Response: HHSC declines to revise §139.4(f) in response to this comment because HSC §245.011(g) requires HHSC to establish and maintain a secure electronic reporting system for the submission of reports. HHSC encourages providers to contact HHSC when they experience technical issues with the electronic reporting system.

Comment: Parkland Health suggested amending §139.5(2)(C) to clarify when a provider must complete the Induced Abortion Report or the Medical Emergency Abortion Incident Report and to add a definition for emergency abortions.

Response: A physician who performs or induces an abortion must always complete the Induced Abortion Report under §139.4. In addition to the Induced Abortion Report, a physician who performs or induces an emergency abortion under one of the three circumstances identified in 139.5(2) must also complete the Medical Emergency Abortion Incident Report. Accordingly, HHSC revised §139.5(2)(A) and (B) to clarify the three circumstances under which a Medical Emergency Abortion Incident Report is required. HHSC declines to revise the rule to add a definition for emergency abortion because "medical emergency" is already defined in the relevant statutes.

Comment: TMA stated replacing the list of 11 categories of information required for reporting of abortion complications in §139.5 with a reference to the requirements listed HSC Chapters 171 and 245, may cause confusion among providers about what information to report. TMA suggests that HHSC list the specific reporting requirements in the rule itself.

Response: HHSC revised §139.5(3)(E) to list the 11 categories of information required for abortion complication reporting under current §139.5(3)(E) to increase clarity and align with HSC §171.006.

Comment: An individual expressed concern about §139.32(b) prohibiting HHSC from enforcing HSC Chapter 171, Subchapter H, and stated the language places Texas residents' health, safety, and wellbeing at risk because private civil entities do not have the capacity to oversee and ensure a licensed entity's regulatory compliance.

Response: HHSC declines to revise the rule in response to this comment because §139.32(b) aligns with HSC §171.005 and §171.207, which expressly prohibit HHSC from enforcing HSC Chapter 171, Subchapter H.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§139.2, 139.4, 139.5

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; Texas Health and Safety Code §171.006, which authorizes HHSC to adopt rules regarding abortion complication reporting; and §§245.009 - 245.010, which require HHSC to adopt rules necessary to implement Chapter 245, including rules to protect the health and safety of a patient of an abortion facility, and provisions requiring compliance with Chapter 171, Subchapter B.

§139.2. Definitions.

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

(1) Abortion--The act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to save the life or preserve the health of an unborn child; remove a dead, unborn child whose death was caused by spontaneous abortion; or remove an ectopic pregnancy.

(2) Abortion complication or adverse event--Any harmful event or adverse outcome with respect to a patient related to an abortion that is performed on the patient or induced and that is diagnosed or treated by a health care practitioner or at a health care facility, including:

(A) shock;

(B) uterine perforation;

(C) cervical laceration;

(D) hemorrhage;

(E) aspiration or allergic response;

(F) infection;

(G) sepsis;

(H) death of the patient;

(I) incomplete abortion;

(J) damage to the uterus;

(K) an infant born alive after the abortion;

(L) blood clots resulting in pulmonary embolism or deep vein thrombosis;

(M) failure to actually terminate the pregnancy;

(N) pelvic inflammatory disease;

(O) endometritis;

(P) missed ectopic pregnancy;

(Q) cardiac arrest;

(R) respiratory arrest;

(S) renal failure;

(T) metabolic disorder;

(U) embolism;

(V) coma;

(W) placenta previa in subsequent pregnancies;

(X) preterm delivery in subsequent pregnancies;

(Y) fluid accumulation in the abdomen;

(Z) hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products;

(AA) adverse reactions to anesthesia or other drugs; or

(BB) any other adverse event as defined by the United States Food and Drug Administration's criteria provided by MedWatch Reporting System.

(3) Abortion facility--A place where abortions are performed or induced.

(4) Abortion-inducing drug--A drug, medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child. The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the Mifeprex regimen, misoprostol (Cytotec), and methotrexate. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

(5) Act--Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code Chapter 245.

(6) Administrator--A person who:

(A) is delegated the responsibility for the implementation and proper application of policies, programs, and services established for the licensed abortion facility; and

(B) meets the qualifications established in §139.46(2) of this chapter (relating to Licensed Abortion Facility Staffing Requirements and Qualifications).

(7) Advanced practice registered nurse (APRN)--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(8) Affidavit--A written statement, sworn to or affirmed, and witnessed by a witness whose signature and printed name appears on the affidavit. "Notarized affidavit" in these rules means an affidavit in which the statement is witnessed by a notary acting pursuant to Government Code Chapter 406.

(9) Affiliate--With respect to an applicant or owner which is:

(A) a corporation--includes each officer, consultant, stockholder with a direct ownership of at least 5.0%, subsidiary, and parent company;

(B) a limited liability company--includes each officer, member, and parent company;

(C) an individual--includes:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, consultant, or stockholder with a direct ownership of at least 5.0%;

(D) a partnership--includes each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--includes each officer, consultant, or the equivalent under the specific business arrangement and each parent company.

(10) Applicant--The owner of an abortion facility which is applying for a license under the Act. For the purpose of this chapter, the word "owner" includes nonprofit organization.

(11) Certified registered nurse anesthetist (CRNA)--A registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and who is currently authorized to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(12) Change of ownership--A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; or a corporate sale, transfer, reorganization, or merger of the corporation which owns the facility if sale, transfer, reorganization, or merger causes a change in the facility's ownership to another person or persons.

(13) Commission--The Texas Health and Human Services Commission.

(14) Condition on discharge--A statement on the condition of the patient at the time of discharge.

(15) Critical item--All surgical instruments and objects that are introduced directly into the bloodstream or into other normally sterile areas of the body.

(16) Decontamination--The physical and chemical process that renders an inanimate object safe for further handling.

(17) Department--The Department of State Health Services.

(18) Director--The director of the Health Care Regulation Department of HHSC or their designee.

(19) Disinfection--The destruction or removal of vegetative bacteria, fungi, and most viruses but not necessarily spores; the process does not remove all organisms but reduces them to a level that is not harmful to a person's health. There are three levels of disinfection:

(A) high-level disinfection--kills all organisms, except high levels of bacterial spores, and is effected with a chemical germicide cleared for marketing as a sterilant by the United States Food and Drug Administration;

(B) intermediate-level disinfection--kills mycobacteria, most viruses, and bacteria with a chemical germicide registered as a "tuberculocide" by the United States Environmental Protection Agency (EPA); and

(C) low-level disinfection--kills some viruses and bacteria with a chemical germicide registered as a hospital disinfectant by the EPA.

(20) Ectopic pregnancy--The implantation of a fertilized egg or embryo outside of the uterus.

(21) Education and information staff--A professional or nonprofessional person who is trained to provide information on abortion procedures, alternatives, informed consent, and family planning services.

(22) Embryonic and fetal tissue remains--An embryo, a fetus, body parts, or organs from a pregnancy that terminates in the death of the embryo or fetus and for which the issuance of a fetal death certificate is not required by state law. The term does not include the umbilical cord, placenta, gestational sac, blood, or body fluids.

(23) Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission.

(24) Facility--A licensed abortion facility as defined in this section.

(25) Fetus--An individual human organism from fertilization until birth.

(26) Health care facility--Any type of facility or home and community support services agency licensed to provide health care in any state or is certified for Medicare (Title XVIII) or Medicaid (Title XIX) participation in any state.

(27) Health care worker--Any person who furnishes health care services in a direct patient care situation under a license, certificate, or registration issued by the State of Texas or a person providing direct patient care in the course of a training or educational program.

(28) Hospital--A facility that is licensed under the Texas Hospital Licensing Law, Health and Safety Code Chapter 241, or if exempt from licensure, certified by the United States Department of Health and Human Services as in compliance with the conditions of participation for hospitals in Title XVIII, Social Security Act (42 United States Code §§1395 et. seq.).

(29) Immediate jeopardy to health and safety--A situation in which there is a high probability that serious harm or injury to patients could occur at any time or already has occurred and may well occur again, if patients are not protected effectively from the harm or if the threat is not removed.

(30) Inspection--An on-site inspection by HHSC in which a standard-by-standard evaluation is conducted.

(31) Licensed abortion facility--A place licensed by HHSC under Health and Safety Code Chapter 245, where abortions are performed or induced.

(32) Licensed mental health practitioner--A person licensed in the State of Texas to provide counseling or psychotherapeutic services.

(33) Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(34) Licensee--A person or entity who is currently licensed as an abortion facility.

(35) Medical abortion--The administration or use of an abortion-inducing drug to induce an abortion, and may also be referred to as a "medication abortion," a "chemical abortion," a "drug-induced abortion," "RU-486," or the "Mifeprex regimen."

(36) Medical consultant--A physician who is designated to supervise the medical services of the facility.

(37) Nonprofessional personnel--Personnel of the facility who are not licensed or certified under the laws of this state to provide a service and shall function under the delegated authority of a physician, registered nurse, or other licensed health professional who assumes responsibility for their performance in the licensed abortion facility.

(38) Noncritical items--Items that come in contact with intact skin.

(39) Notarized copy--A copy attached to a notarized affidavit which states that the attached copy(ies) are true and correct copies of the original documents.

(40) Patient--A pregnant female on whom an abortion is performed or induced, but shall in no event be construed to include a fetus.

(41) Person--Any individual, firm, partnership, corporation, or association.

(42) Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the State of Texas.

(43) Physician assistant--A person licensed as a physician assistant by the Texas Physician Assistant Board.

(44) Plan of correction--A written strategy for correcting a licensing violation. The plan of correction shall be developed by the facility, and shall address the systemic operation(s) of the facility as the systemic operation(s) apply to the deficiency.

(45) Post-procedure infection--An infection acquired at or during an admission to a facility; there shall be no evidence that the infection was present or incubating at the time of admission to the facility. Post-procedure infections and their complications that may occur after an abortion include, but are not limited to, endometritis and other infections of the female reproductive tract, laboratory-confirmed or clinical sepsis, septic pelvic thrombophlebitis, and disseminated intravascular coagulopathy.

(46) Pregnant unemancipated minor certification form--The document prepared by HHSC and used by physicians to certify the medical indications supporting the judgment for the immediate abortion of a pregnant minor.

(47) Pre-inspection conference--A conference held with HHSC staff and the applicant or his or her representative to review licensure standards, inspection documents, and provide consultation prior to the on-site licensure inspection.

(48) Professional personnel--Patient care personnel of the facility currently licensed or certified under the laws of this state to use a title and provide the type of service for which the patient care personnel are licensed or certified.

(49) Quality assurance--An ongoing, objective, and systematic process of monitoring, evaluating, and improving the appropriateness, and effectiveness of care.

(50) Quality improvement--An organized, structured process that selectively identifies improvement projects to achieve improvements in products or services.

(51) Registered nurse (RN)--A person who is currently licensed by the Texas Board of Nursing as a registered nurse.

(52) Semicritical items--Items that come in contact with nonintact skin or mucous membranes. Semicritical items may include respiratory therapy equipment, anesthesia equipment, bronchoscopes, and thermometers.

(53) Standards--Minimum requirements under the Act and this chapter.

(54) Sterile field--The operative area of the body and anything that directly contacts this area.

(55) Sterilization--The use of a physical or chemical procedure to destroy all microbial life, including bacterial endospores.

(56) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity that includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(57) Surgical abortion--The use of instruments, aspiration, and/or suction to induce an abortion, with the purpose of terminating the pregnancy of a woman known to be pregnant.

(58) Third trimester certification form--The document prepared by HHSC and used by physicians to certify the medical indications supporting the judgment for the abortion of a viable fetus during the third trimester of pregnancy.

(59) Third trimester--A gestational period of not less than 26 weeks (following last-menstrual period (LMP)).

(60) Unemancipated minor--A minor who is unmarried and has not had the disabilities of minority removed under Family Code Chapter 31.

§139.4. Monthly Reporting Requirements for All Abortions Performed or Induced.

(a) The purpose of this section is to implement the monthly abortion reporting requirements under Health and Safety Code (HSC) §245.011 for physicians who perform or induce one or more abortions during the preceding calendar month. A report must be submitted for each abortion performed or induced.

(b) The report may not identify by any means the patient.

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

(9) the number of previous induced abortions of the patient;

(10) whether the patient viewed the printed material provided under Health and Safety Code Chapter 171;

(11) whether the sonogram image, verbal explanation of the image, and the audio of the heart sounds were made available to the patient;

(12) whether the patient completed the "Abortion and Sonogram" election form;

(13) the method used to dispose of embryonic and fetal tissue remains;

(14) if the patient is younger than 18 years of age, as documented in the patient's medical record, whether authorization for the abortion was obtained by:

(A) written consent of the patient's parent, managing conservator, or legal guardian under Occupations Code §164.052(a)(19) and whether the consent was given:

(i) in person at the location where the abortion was performed; or

(ii) at a place other than the location where the abortion was performed;

(B) judicial authorization under Family Code §33.003 or §33.004 and:

(i) if applicable, the process the physician or physician's agent used to inform the patient of the availability of petitioning for judicial authorization as an alternative to the written consent required by Occupations Code §164.052(a)(19);

(ii) whether the court forms were provided to the patient by the physician or the physician's agent;

(iii) whether the physician or the physician's agent made arrangements for the patient's court appearance; and

(iv) if known, whether the patient became pregnant while in foster care or in the managing conservatorship of the Department of Family and Protective Services;

(C) consent of the patient because the patient had the disabilities of minority removed; or

(D) the physician's conclusion, documented in the patient's medical record, that on the basis of the physician's good-faith clinical judgment:

(i) a condition existed that complicated the medical condition of the patient and necessitated the immediate abortion to avert the patient's death or to avoid a serious risk of substantial impairment of a major bodily function; and

(ii) there was insufficient time to obtain the consent of the patient's parent, managing conservator, or legal guardian;

(15) the method of pregnancy verification;

(16) the type of anesthesia, if any, used in the procedure: intravenous sedation or general anesthesia;

(17) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion;

(18) if the abortion was performed or induced because of a medical emergency:

(A) certification that the abortion was necessary due to a medical emergency; and

(B) the woman's medical condition requiring the abortion;

(19) if the abortion was performed or induced to preserve the health of the pregnant woman:

(A) the medical condition the abortion was asserted to address; and

(B) the medical rationale for the physician's conclusion that the abortion was necessary to address the medical condition; and

(20) for an abortion other than an abortion described by subparagraph (19) of this subsection, that maternal health was not a purpose of the abortion.

(d) Except as provided by HSC §245.023, all information and records held by HHSC under this chapter are confidential and are not open records for the purposes of Government Code Chapter 552. That information may not be released or made public on subpoena, or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person, patient, physician performing or inducing an abortion, the county in which a minor obtained judicial authorization for an abortion under Family Code Chapter 33, or abortion facility is not identified;

(2) with the consent of each person, patient, physician, and abortion facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter;

(4) to appropriate state licensing boards to enforce state licensing laws; or

(5) to licensed medical or health care personnel currently treating the patient.

(e) The reporting period for each physician is the preceding calendar month in which the physician performed or induced one or more abortions. Each physician who performs or induces one or more abortions shall submit the abortion report(s) to HHSC no later than the 15th day of the subsequent month.

(f) The abortion reports shall be submitted via the secure electronic reporting system established and maintained by HHSC.

(g) Not later than the seventh day after the date the report required by this section is due, HHSC shall notify the Texas Medical Board of a violation of this section.

(h) HHSC shall publish on its Internet website a monthly report containing aggregate data of the information in the reports submitted under this section. HHSC's monthly report may not identify by any means an abortion facility, a physician performing or inducing an abortion, the county in which a minor obtained judicial authorization for an abortion under Family Code Chapter 33, or a patient.

§139.5. Additional Reporting Requirements.

In addition to the reporting required by §139.4 of this subchapter (relating to Monthly Reporting Requirements for All Abortions Performed or Induced), physicians and health care facilities subject to this chapter shall comply with this section when performing or inducing third trimester abortions, when performing or inducing emergency abortions, and when diagnosing or treating abortion complications.

(1) Reporting requirements for third trimester abortions.

(A) The purpose of this paragraph is to establish procedures for reporting third trimester abortions as required by the Medical Practice Act, Occupations Code Chapters 151 - 160 and 162 - 165.

(B) A physician who performs or induces a third trimester abortion of a viable fetus with a biparietal diameter of 60 millimeters or greater shall certify in writing to the Texas Health and Human Services Commission (HHSC) the medical indications supporting the physician's judgment that the abortion is either necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman, or the fetus has a severe and irreversible abnormality, as identified through reliable diagnostic procedures.

(C) The certification shall be made on a form approved by HHSC.

(D) The certification form and any supporting documents shall be submitted via the secure electronic reporting system established and maintained by HHSC.

(E) HHSC shall retain the certification form and supporting documents as a cross-reference to the annual reporting requirements of the Act and this section. The certification form and supporting documents retained by HHSC are confidential. Any release of the documents shall be in accordance with the provisions of the Medical Practice Act, Occupations Code Chapters 151 - 160 and 162 - 165.

(F) A physician performing or inducing abortions at a licensed abortion facility who fails to submit the certification form required under this paragraph may subject the licensed facility to denial, suspension, probation, or revocation of the license in accordance with §139.32 of this chapter (relating to License Denial, Suspension, Probation, or Revocation).

(2) Reporting requirements for emergency abortions.

(A) The purpose of this paragraph is to establish procedures for reporting emergency abortions performed or induced as required by Family Code §33.002(a)(3) (relating to Parental Notice), Health and Safety Code §171.0124 (relating to Exception for Medical Emergency), and Health and Safety Code §285.202 (relating to Use of Tax Revenue for Abortions; Exception for Medical Emergency).

(B) A physician who performs or induces an emergency abortion under one of the three circumstances described in subparagraph (A) of this paragraph shall certify in writing to HHSC that a medical emergency exists.

(C) The certification shall be made on a form approved by HHSC.

(D) The certification form shall be submitted via the secure electronic reporting system established and maintained by HHSC.

(E) A physician performing or inducing abortions at a licensed abortion facility who fails to submit the certification form required by this paragraph may subject the licensed facility to denial, suspension, probation, or revocation of the license in accordance with §139.32 of this chapter.

(3) Reporting requirements for abortion complications.

(A) Within three business days after the date the complication is diagnosed or treated, a physician shall submit to HHSC an abortion complication report.

(B) Within 30 calendar days after the date the complication is diagnosed or treated, a hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical care as defined by Health and Safety Code §773.003 shall submit to HHSC an abortion complication report.

(C) The certification form shall be submitted via the secure electronic reporting system established and maintained by HHSC.

(D) A report submitted under this paragraph may not identify the physician who performed or induced the abortion, other than the reporting physician, or the patient.

(E) The report must identify the name of the physician submitting the report or the name and type of health care facility submitting the report, must include the most specific, accurate, and complete reporting for the highest level of specificity, and must include, if known:

(i) the date of the abortion that caused or may have caused the complication;

(ii) the type of abortion that caused or may have caused the complication;

(iii) the name and type of facility where the abortion was performed;

(iv) the name, date, and type of facility where the complication was diagnosed and treated;

(v) description of complications;

(vi) the number of weeks of gestation at which the abortion was performed;

(vii) the number of previous live births of the patient;

(viii) the number of previous induced abortions of the patient;

(ix) the type of anesthesia, if any, used in the procedure: intravenous sedation or general anesthesia;

(x) the patient's year of birth, race, marital status, and state and county of residence; and

(xi) the date of the first day of the patient's last menstrual period that occurred before the date of the abortion that caused or may have caused the complication.

(F) HHSC shall notify the Texas Medical Board of a violation of this paragraph by a physician.

(G) HHSC shall publish on its Internet website an annual report containing aggregate data of the information in the reports submitted under this paragraph for the previous calendar year. The annual report may not include any duplicative data and may not identify by any means an abortion facility, a physician, or a patient.

(H) The third separate violation of this paragraph by a facility required to report under subparagraph (B) of this paragraph constitutes cause for the revocation or suspension of the facility's license, permit, registration, certificate, or other authority or for other disciplinary action against the facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204402

Karen Ray
Chief Counsel
Department of State Health Services
Effective date: November 24, 2022
Proposal publication date: May 6, 2022
For further information, please call: (512) 834-4591

♦ ♦ ♦

SUBCHAPTER C. ENFORCEMENT

25 TAC §139.32

STATUTORY AUTHORITY

The amendment 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; Texas Health and Safety Code §171.006, which authorizes HHSC to adopt rules regarding abortion complication reporting; and §§245.009 - 245.010, which require HHSC to adopt rules necessary to implement Chapter 245, including rules to protect the health and safety of a patient of an abortion facility, and provisions requiring compliance with Chapter 171, Subchapter B.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204403
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: November 24, 2022
Proposal publication date: May 6, 2022
For further information, please call: (512) 834-4591

♦ ♦ ♦

SUBCHAPTER D. MINIMUM STANDARDS FOR LICENSED ABORTION FACILITIES

25 TAC §§139.50, 139.52, 139.53, 139.55

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; Texas Health and Safety Code §171.006, which authorizes HHSC to adopt rules regarding abortion complication reporting; and §§245.009 - 245.010, which require HHSC to adopt rules necessary to implement Chapter 245, including rules to protect the health and safety of a patient of an abortion facility, and provisions requiring compliance with Chapter 171, Subchapter B.

§139.53. Medical and Clinical Services.

(a) Surgical abortion.

(1) The medical consultant shall be responsible for implementing and supervising the medical and clinical policies of the facility.

(2) All medical and clinical services of the facility, with the exception of the abortion procedure, shall be provided under the direction of a physician or registered nurse who assumes responsibility for the clinical employees' performance in the facility.

(3) A licensed abortion facility shall ensure that a surgical consent form is signed by the patient prior to the procedure being started, that the patient is informed of the risks and the benefits of the procedure, and that the patient recognizes the alternatives to abortion. Informed consent shall be in accordance with rules adopted by the Texas Medical Disclosure Panel under §601.2 of this title (relating to Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A), §601.4 of this title (relating to Disclosure and Consent Form), and Health and Safety Code §171.011 (relating to Informed Consent Required), and §171.012 (relating to Voluntary Informed Consent).

(4) A licensed abortion facility shall ensure that the attending physician, advanced practice registered nurse, or physician assistant has obtained and documented a preoperative history, physical exam, and laboratory studies, including verification of pregnancy.

(5) A licensed abortion facility shall ensure that:

(A) the attending physician examines each patient immediately prior to surgery to evaluate the risk to the procedure; and

(B) the person administering the anesthetic agent(s) examines the patient immediately prior to surgery to evaluate the risk of anesthesia.

(6) The administration of anesthesia shall be in accordance with §139.59 of this subchapter (relating to Anesthesia Services).

(7) A surgical abortion shall be performed only by a physician.

(8) A physician, advanced practice registered nurse, physician assistant, registered nurse, or licensed vocational nurse shall be in the facility whenever there is a patient in the procedure room or recovery room. While a patient is in the procedure room or recovery room she shall not be left unattended.

(9) The recovery room(s) at the facility shall be supervised by a physician, advanced practice registered nurse, physician assistant, or registered nurse. This supervisor shall be available for recovery room staff within a recommended 10 minutes with a maximum required 15 minutes while any patient is in the recovery room.

(10) A physician shall be available for the facility while any patient is in the recovery room within a recommended 10 minutes and a maximum required 15 minutes.

(11) The facility shall ensure that a patient is fully reactive and her vital signs are stable before discharging the patient from the facility upon written order by the attending physician.

(12) All fetal tissue shall be examined grossly at the time of the procedure. In the absence of visible fetal parts or placenta, the tissue may be examined by magnification for the detection of villi. If this examination is inconclusive, the tissue shall be sent to a pathology lab. The results of the tissue examination shall be recorded in the patient's clinical record.

(13) A facility shall meet the requirements set forth by the department in §§1.131 - 1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(b) Medical abortion.

(1) The medical consultant shall be responsible for implementing and supervising the medical and clinical policies of the facility.

(2) All medical and clinical services of the facility, with the exception of the abortion procedure, shall be provided under the direction of a physician or registered nurse who assumes responsibility for the clinical employees' performance in the facility.

(3) A licensed abortion facility shall ensure:

(A) the physician(s) providing medical abortion is able to accurately date a pregnancy;

(B) the physician(s) is able to determine that the pregnancy is not an ectopic gestation;

(C) the physician(s) is able to provide surgical intervention or provide for the patient to receive a surgical abortion if necessary; and

(D) patients have access to medical facilities equipped to provide blood transfusion and patient resuscitation, if necessary.

(4) A licensed abortion facility shall ensure follow-up examination and services are provided to patients requesting medical abortion.

(5) A licensed abortion facility shall ensure that the attending physician, advanced practice registered nurse, or physician assistant has obtained and documented a pre-procedure history, physical exam, and laboratory studies, including verification of pregnancy.

(6) A licensed abortion facility shall ensure:

(A) written consent is obtained from the patient prior to the commencement of the abortion procedure in accordance with §139.50 of this chapter (relating to Disclosure Requirements);

(B) the patient is informed of the risks and benefits of the procedure;

(C) the patient is informed of the possibility that a surgical abortion may be required;

(D) the patient is informed of the alternatives to abortion; and

(E) informed consent is in accordance with rules adopted by the Texas Medical Disclosure Panel under §601.2 of this title, §601.4 of this title, and Health and Safety Code §171.011 and §171.012.

(7) A licensed abortion facility shall provide the patient with written discharge instructions including a direct referral to a physician who shall accept the patient for surgical abortion.

(8) A medical abortion shall be performed only by a physician.

(c) Requirements of a physician. A physician performing or inducing an abortion must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that:

(1) is located not further than 30 miles from the location at which the abortion is performed or induced; and

(2) provides obstetrical or gynecological health care services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204405
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: November 24, 2022
Proposal publication date: May 6, 2022
For further information, please call: (512) 834-4591

♦ ♦ ♦

CHAPTER 414. RIGHTS AND PROTECTIONS OF PERSONS RECEIVING MENTAL HEALTH SERVICES

SUBCHAPTER P. RESEARCH IN TDMHMR FACILITIES

25 TAC §§414.751 - 414.765

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Texas Administrative Code (TAC) Title 25, Part 1, Chapter 414, Subchapter P, consisting of §414.751, concerning Purpose; §414.752, concerning Application; §414.753, concerning Definitions; §414.754, concerning General Principles; §414.755, concerning Designated Institutional Review Board (IRB); §414.756, concerning IRB Functions and Operations; §414.757, concerning Review and Approval of Proposed Research; §414.758, concerning Informed Consent; §414.759, concerning Research Involving Offenders as Human Subjects; §414.760, concerning Using and Disclosing Protected Health Information (PHI) in Research; §414.761, concerning Investigation of Allegations of Misconduct in Science; §414.762, concerning Responsibilities of the Office of Research Administration (ORA); §414.763, concerning Exhibits; §414.764, concerning References; and §414.765, concerning Distribution.

Sections 414.751 - 414.765 are adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3908). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to reflect the transition of programs from DSHS to HHSC by repealing rules in 25 TAC, Part 1, Chapter 414, Subchapter P and simultaneously adopting new rules in 26 TAC Chapter 925. The adoption of new rules is published elsewhere in this issue of the *Texas Register.* The new rules reflect the transition of programs to HHSC; and update research protocols to align with applicable federal laws.

COMMENTS

The 31-day comment period ended August 8, 2022.

During this period, HHSC did not receive any comments regarding the proposed repeals.

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, and Texas Health and Safety Code §574.154, regarding participation in research.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204442
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: November 27, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 438-3049

♦ ♦ ♦

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER A. INTRODUCTION

26 TAC §553.3

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 553, Licensing Standards for Assisted Living Facilities, amendments to §553.3, relating to Definitions; §553.17, relating to Criteria for Licensing; §553.103, relating to Site and Location for all Assisted Living Facilities; §553.257, relating to Human Resources; and §553.259, relating to Admission Policies and Procedures.

The amendments to §§553.3, 553.17, 553.103, and 553.257 are adopted with changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4633). These rules will be republished.

The amendments to §553.259 are adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4633). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments to §553.17 and §553.103 is to implement House Bill (H.B.) 1681, 87th Legislature, Regular Session, 2021. H.B. 1681 prohibits new construction of assisted living facilities (ALFs) in a 100-year flood plain in counties of more than 3.3 million residents. The amendments also update outdated procedural information related to the licensing process.

The purpose of the amendments to §553.257 is to implement Senate Bill (S.B.) 271, 87th Legislature, Regular Session, 2021. S.B. 271 requires ALFs to obtain a signed disclosure, on an HHSC prescribed form, from applicants for employment regarding out-of-state criminal convictions and to perform a name-based criminal history check in any state the applicant has lived in during the previous five years.

The purpose of the amendments to §553.3 and §553.259 is to implement S.B. 383, 87th Legislature, Regular Session, 2021. S.B. 383 requires an ALF that advertises, markets, or otherwise promotes that it provides memory care services to provide an additional HHSC-prescribed memory care disclosure statement to each resident.

The amendments also update rule references that became outdated as a result of the administrative transfer of rules from 40 TAC Chapter 92 to 26 TAC Chapter 553, reflect the transfer of functions from the Texas Department of Human Services or the Texas Department of Aging and Disability Services to HHSC, update terminology, and remove outdated references and requirements.

COMMENTS

The 31-day comment period ended September 6, 2022.

During this period, HHSC received comments regarding the proposed rules from three commenters: Texas Assisted Living Association, Office of the State Long-term Care Ombudsman, and Texas Healthcare Association. A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter suggested moving the date of implementation for the requirement prohibiting a newly constructed ALF from being built in a 100-year flood plain if the facility is located in a county of more than 3.3 million residents. The commenter also recommended that HHSC accept Federal Emergency Management Agency (FEMA) documentation in addition to the FEMA flood maps. The proposed rules at §553.103 implemented this rule beginning November 1, 2022. This date was chosen to coincide with the effective date of the rule. The commenter suggested changing the date to January 1, 2023, and to have the date apply to the submission of construction documents for architectural review by HHSC.

Response: HHSC declined to make the requested change to the rule implementation date but did change the date to match the rule effective date. HHSC will provide clarifying policy guidance about when the requirement will begin being enforced after the rule becomes effective. HHSC will also include in the policy guidance that FEMA documentation will be accepted by HHSC in addition to the FEMA flood maps.

Comment: A commenter recommended adding language to §553.257 to clarify that an employee may be hired by a facility pending the out of state background checks but must not hold a position that has direct contact with residents until the background checks have cleared.

Response: HHSC agreed with the commenter and revised the rule as suggested.

Comment: Multiple commenters expressed concern over an additional memory care disclosure statement required by §553.259. Commenters stated that multiple disclosure statements may be confusing to prospective or new residents. One commenter stated that the definition of "Memory care services" at §553.3(52) may confuse people by using the term "memory care impairment."

Response: HHSC declined to remove the additional memory care disclosure statement from rule as it is required by S.B. 383. HHSC agreed with the commenter regarding the definition of "Memory care services" and made clarifying changes in §553.3(52).

HHSC made a change to §553.3(10) to clarify the definition of the "Assisted Living Facility Memory Care Disclosure Statement."

HHSC edited the date in §553.17 and §553.103 to December 6, 2022. This date will coincide with the effective date of the rule.

HHSC made a change to §553.257(b)(4) to reflect the new TAC reference for the employee misconduct registry.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

§553.3. Definitions.

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

(1) Abuse--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program, as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure), or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code §247.032.

(3) Actual harm--A negative outcome that compromises a resident's physical, mental, or emotional well-being.

(4) Advance directive--Has the meaning given in Texas Health and Safety Code §166.002.

(5) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, or person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(6) Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(7) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC), or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(8) Alzheimer's facility--A Type B facility that is certified to provide specialized services to residents with Alzheimer's disease or a related condition.

(9) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(10) Assisted Living Facility Memory Care Disclosure Statement form--The HHSC-prescribed form that a facility uses when the facility advertises, markets, or otherwise promotes that it provides memory care services to residents with Alzheimer's disease and related disorders.

(11) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(12) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(13) Behavioral emergency--Has the meaning given in §553.261(g)(2) of this chapter (relating to Coordination of Care).

(14) Certified ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(15) CFR--Code of Federal Regulations.

(16) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(17) Commingles--The laundering of apparel or linens of two or more individuals together.

(18) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;

(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other

business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(19) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and about which the facility and HHSC have not been informed by the resident, by the person who placed the device in the room, or by a person who uses the device.

(20) Delegation--In the assisted living facility context, written authorization by a registered nurse (RN) acting on behalf of the facility for personal care staff to perform tasks of nursing care in selected situations, where delegation criteria are met for the task. The delegation process includes nursing assessment of a resident in a specific situation, evaluation of the ability of the personal care staff, teaching the task to the personal care staff, ensuring supervision of the personal care staff in performing a delegated task, and re-evaluating the task at regular intervals.

(21) Dietitian--A person who currently holds a license or provisional license issued by the Texas Department of Licensing and Regulation.

(22) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(23) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(24) Disclosure statement--An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(25) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(26) Exploitation--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(3), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(27) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(28) Fire suppression authority--The paid or volunteer firefighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(29) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(30) Functional disability--A mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and personal care.

(31) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(32) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(33) Health maintenance activity (HMA)--Consistent with 22 TAC §225.4 (relating to Definitions), a task that:

(A) may be exempt from delegation based on an RN's assessment in accordance with §553.263(c) of this chapter (relating to Health Maintenance Activities); and

(B) requires a higher level of skill to perform than personal care services and, in the context of an ALF, excludes the following tasks:

(i) intermittent catheterization; and

(ii) subcutaneous, nasal, or insulin pump administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus.

(34) HHSC--The Texas Health and Human Services Commission.

(35) Immediate threat to the health or safety of a resident--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(36) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(37) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(38) Isolated--A very limited number of residents are affected, and a very limited number of staff are involved, or the situation has occurred only occasionally.

(39) Key infectious agents--Bacteria, viruses, and other microorganisms which cause the most common infections and infectious diseases in long-term care facilities, and can be mitigated by establishing, implementing, maintaining, and enforcing proper infection, prevention, and control policies and procedures.

(40) Large facility--A facility licensed for 17 or more residents.

(41) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(42) License holder--A person that holds a license to operate a facility.

(43) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.

(44) Local code--A model building code adopted by the local building authority where the facility is constructed or located.

(45) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(46) Manager--The individual in charge of the day-to-day operation of the facility.

(47) Managing local ombudsman--Has the meaning given in §88.2 of this title.

(48) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(49) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(50) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §553.261(a) of this chapter.

(51) Medication (self- or self-administration of)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(52) Memory care services--Services provided by an assisted living facility to meet the needs of residents with a diagnosis of Alzheimer's disease or related disorders or a diagnosis of dementia.

(53) Multidrug-resistant organisms--Bacteria and other microorganisms that have developed resistance to multiple types of medicine used to act against the microorganism.

(54) Neglect--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(4), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for oneself the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(55) NFPA 101--The 2012 publication titled *NFPA 101 Life Safety Code* published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(56) Ombudsman intern--Has the meaning given in §88.2 of this title.

(57) Ombudsman program--Has the meaning given in §88.2 of this title.

(58) Online portal--A secure portal provided on the HHSC website for licensure activities, including for an assisted living facility applicant to submit licensure applications and information.

(59) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with this chapter or a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(60) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(61) Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(62) Personal care staff--An attendant whose primary employment function is to provide personal care services.

(63) Physician--A practitioner licensed by the Texas Medical Board.

(64) Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact on a resident.

(65) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(66) Private and unimpeded access--Access to enter a facility or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(67) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(68) Rapid influenza diagnostic test--A test administered to a person with flu-like symptoms that can detect the influenza viral nucleoprotein antigen.

(69) Resident--An individual accepted for care in a facility.

(70) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(71) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(72) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(73) RN (registered nurse)--A person who holds a current and active license from the Texas Board of Nursing to practice professional nursing, as defined in Texas Occupations Code §301.002(2).

(74) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(75) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(76) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(77) Short-term acute episode--An illness of less than 30 days' duration.

(78) Small facility--A facility licensed for 16 or fewer residents.

(79) Stable and predictable--A phrase describing the clinical and behavioral status of a resident that is non-fluctuating and consistent and does not require the regular presence of a registered or licensed vocational nurse.

(A) The phrase does not include within its meaning a description of the clinical and behavioral status of a resident that is expected to change rapidly or needs continuous or continual nursing assessment and evaluation.

(B) The phrase does include within its meaning a description of the condition of a resident receiving hospice care within a facility where deterioration is predictable.

(80) Staff--Employees of an assisted living facility.

(81) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(82) State Ombudsman--Has the meaning given in §88.2 of this title.

(83) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(84) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(85) Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(86) Widespread in scope--A violation of Texas Health and Safety Code, Chapter 247 or a rule, standard, or order adopted under Chapter 247 that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

(87) Willfully interfere--To act or not act to intentionally prevent, interfere with, impeded, or to attempt to intentionally prevent, interfere with, or impede.

(88) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204423
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

SUBCHAPTER B. LICENSING

26 TAC §553.17

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

§553.17. Criteria for Licensing.

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(2) The presence or absence of any one factor in paragraph (1) of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

(1) the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority;

(C) meets HHSC licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an on-site inspection by HHSC; and

(D) if located in a county of more than 3.3 million residents for initial license applications submitted or issued on or after December 6, 2022, is not located in a 100-year floodplain; and

(2) operation of the facility meets HHSC licensing standards based on an on-site health inspection by HHSC, which must include observation of the care of a resident; or

(3) the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection (c)(3) of this section must contact HHSC to determine which accreditation commissions are available to meet the requirements of that subsection. If a license holder uses an on-site accreditation survey by an accreditation commission, as provided in this subsection and §553.33(i) of this subchapter (relating to Renewal Procedures and Qualifications), the license holder must:

(1) provide written notification to HHSC by submitting an updated application in the licensing system within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission; and

(2) include a copy of the notice of change with its written notification to HHSC.

(e) HHSC issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) HHSC denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) HHSC may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard, or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §553.751(a)(2) - (9) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraph (1) or (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) engages in the following:

(A) knowingly submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees, as described in §553.47 of this subchapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code §247.021 by operating a facility without a license; or

(9) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(i) Without limitation, HHSC reviews all information provided by an applicant, a license holder, a person required to be disclosed on the application for licensure, or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h) of this section. HHSC may grant a license if HHSC finds the applicant, license holder, person required to be disclosed on the application for licensure, affiliate, or manager is able to comply with the rules in this chapter.

(j) HHSC reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, HHSC examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204424

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

SUBCHAPTER D. FACILITY CONSTRUCTION DIVISION 2. PROVISIONS APPLICABLE TO ALL FACILITIES

26 TAC §553.103

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

§553.103. Site and Location for all Assisted Living Facilities.

(a) Firefighting unit. An assisted living facility must be served by a professional or volunteer firefighting unit and must have a water supply that meets the firefighting unit's requirements and approval.

(b) Correction of hazards. An assisted living facility must correct a site or building condition that HHSC staff identifies to be a fire, health, or physical hazard.

(c) Parking.

(1) An assisted living facility must provide or arrange for nearby parking spaces for the private vehicles of residents and visitors.

(2) An assisted living facility must provide a minimum of one parking space for every four residents in its licensed capacity, and for any fraction thereof, or per local requirements, whichever is more stringent.

(d) Ramps.

(1) An assisted living facility must ensure a ramp, walk, or step is of slip-resistive texture and is uniform, without irregularities.

(2) An assisted living facility must ensure a ramp does not exceed a slope of one foot in 12 feet.

(3) An assisted living facility must ensure any new ramp has a clear width of at least 36 inches. A new ramp is one that was installed or constructed on or after August 31, 2021.

(e) Site conditions. An assisted living facility must provide a guardrail, fence, or handrail where a grade makes an abrupt change in level.

(f) Outside grounds. An assisted living facility must ensure that each outside area, grounds, and any adjacent buildings are maintained in good condition and kept free of rubbish, garbage, and untended growth that may constitute a fire or health hazard.

(g) Drainage. An assisted living facility must ensure site grades provide for water drainage away from structures to prevent

ponding or standing water at or near a building, unless the ponding or standing water is part of an approved drainage system intended to hold water for a period of time.

(h) 100-year Floodplain. An assisted living facility that applies for an initial license or is initially licensed on or after December 6, 2022, must not be located in a 100-year floodplain, if the facility is located in a county of more than 3.3 million residents.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204426
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

SUBCHAPTER E. STANDARDS FOR LICENSURE

26 TAC §553.257, §553.259

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

§553.257. Human Resources.

(a) Personnel records. A facility must keep current and complete personnel records on a facility employee for review by HHSC staff including:

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in §553.261(f) of this subchapter (relating to Coordination of Care);

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in §553.261(f) of this subchapter;

(6) the signed statement from the employee referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities), acknowledging that the employee may be criminally liable for the failure to report abuse, neglect, and exploitation; and

(7) a signed disclosure statement, indicating whether the employee:

(A) has been convicted of an offense described in Texas Health and Safety Code §250.006; and

(B) has lived in a state other than Texas within the past five years.

(b) Investigation of facility employees.

(1) A facility must comply with the provisions of Texas Health and Safety Code, Chapter 250.

(2) Before a facility hires an employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine if the individual is designated in either registry as unemployable based on employee misconduct. Both registries can be accessed on the HHSC Internet website.

(3) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable or who has been convicted of an offense listed in §250.006 as a bar to employment or is a contraindication to employment with the facility.

(4) A facility must provide notification about the EMR to an employee in accordance with 26 TAC §711.1413 (relating to Employment and Registry Information).

(5) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR to determine if the employee is designated in either registry as unemployable at least every 12 months.

(6) A facility must keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(7) If an applicant for employment indicates on the disclosure statement that they have lived in another state within the past five years, the facility must conduct a name-based criminal history check in each state in which the applicant previously resided within the five-year period. A facility may hire the applicant pending the results of the name-based criminal history check in each state, but the employee must not be in a position that has direct contact with residents.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204427
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 554, Licensing Standards for Licensure and Medicaid Certification, amendments to §554.101, relating to Definitions; §554.204, relating to Application Requirements; §554.403, relating to Notice of Rights and Services; §554.1921, relating to General Requirements for a Nursing Facility; §554.1935, relating to Automated External Defibrillators; §554.2002, relating to Procedural Requirements--Licensure Inspections and Surveys; §554.2326, relating to Medicaid Swing Bed Program for Rural Hospitals; and the repeal of §554.1913, relating to Clinical Records Service Supervisor.

The amendments to §§554.101, 554.403, 554.1921 and §554.2326 are adopted with changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4645). These rules will be republished.

The amendments to §§554.204, 554.1935, and 554.2002, and the repeal of §554.1913 are adopted without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4645). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments to §§554.101, 554.204, 554.403, and 554.1921 is to implement Senate Bill (S.B.) 383, 87th Legislature, Regular Session, 2021. S.B. 383 requires a nursing facility (NF) that advertises, markets, or otherwise promotes that it provides memory care services to provide an additional HHSC prescribed memory care disclosure statement to each resident or resident representative and to each person applying for services from the facility or that person's next of kin or guardian.

The purpose of the repeal of §554.1913 and amendments to §554.2326 is to remove the requirement for a NF to employ a clinical records supervisor or other medical records keeper.

The purpose of the amendments to §554.1935 is to implement S.B. 199, 87th Legislature, Regular Session, 2021. S.B. 199 requires a NF to conduct monthly inspections of its automated external defibrillator.

The purpose of the amendment to §554.2002 is to implement House Bill (H.B.) 1423, 87th Legislature, Regular Session, 2021. H.B. 1423 increases the survey frequency of required unannounced NF inspections from two per three-year licensing period to one annually. H.B. 1423 also allows HHSC to conduct a follow-up inspection for evaluation and monitoring purposes to ensure HHSC is citing deficiencies consistently.

The amendments also update rule references that became outdated as a result of the administrative transfer of rules from 40 TAC Chapter 19 to 26 TAC Chapter 554, reflect the transfer of functions from the Texas Department of Human Services or the Texas Department of Aging and Disability Services to HHSC, update terminology, and remove outdated references and requirements.

COMMENTS

The 31-day comment period ended September 6, 2022.

During this period, HHSC received comments regarding the proposed rules from two commenters: the Office of the State Long-term Care Ombudsman and Texas Healthcare Association. A summary of comments relating to the rules and HHSC's responses follows.

Comment: The commenters expressed concern over an additional memory care disclosure statement required by §554.403(n)(1). Commenters stated that multiple disclosure statements may be confusing to prospective or new residents. One commenter was concerned that memory care services may not be clearly distinguished from an Alzheimer's certified facility's services and recommended changes to language at §554.403(n)(1)(B). Another commenter recommended allowing more time to notify the residents of a change to the disclosure statement as required by §554.403(o).

Response: HHSC declined to remove the additional memory care disclosure statement in §554.403(n)(1) as it is required by S.B. 383. HHSC agreed with the concerns that memory care services may not be clearly distinguished from Alzheimer's and revised the definition of "Memory care services" at §554.101(82) and revised language at §554.403(n)(1)(B). HHSC declined to increase the time frame in §554.403(o) to allow for more than 30-days' notice to residents and families before a change to the disclosure statement. HHSC will take this recommendation into consideration during a future rule project.

HHSC made a change to §554.1921(e)(12) to comply with changes to Government Code §411.204 and remove the word "concealed" when referencing handguns.

HHSC made a change to §554.2326(e) to remove the swing bed NF applicability reference requirements as they are informational only and are found in the requirements for hospitals. There is no additional benefit to having the rule references in the NF rules.

SUBCHAPTER B. DEFINITIONS

26 TAC §554.101

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.101. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (indecent exposure) or Texas Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activity director--The qualified individual appointed by the facility to direct the activities program as described in §554.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--A person currently licensed in accordance with 26 TAC Chapter 555 (relating to Nursing Facility Administrators).

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Advanced practice registered nurse--A person licensed as a registered nurse and approved to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(9) Adverse event--An untoward, undesirable, and usually unanticipated event that causes death or serious injury, or the risk of death or serious injury.

(10) Alzheimer's Disclosure Statement for Nursing Facilities--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(11) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(12) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(13) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or resident representative as having primary responsibility for the treatment and care of the resident.

(14) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(15) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(16) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning, and reasonable safety, all consistent with the preferences of the resident.

(17) Certification--The determination by HHSC that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(18) Certified facility--A facility that meets the requirements of the Medicare program, the Medicaid program, or both.

(19) Certified Ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(20) CFR--Code of Federal Regulations.

(21) Change of ownership-- An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(22) Chemical restraints--Any drug administered for the purpose of discipline or convenience, and not required to treat the resident's medical symptoms.

(23) CMS--Centers for Medicare & Medicaid Services.

(24) Complaint--Any allegation received by HHSC other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(25) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(26) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §554.801(2) of this chapter (relating to Resident Assessment).

(27) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §554.802(c)(2) of this chapter (relating to Comprehensive Person-Centered Care Planning), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(28) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(29) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and HHSC have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(30) DADS--The term referred to the Department of Aging and Disability Services; it now refers to HHSC.

(31) Dentist--A practitioner licensed to practice dentistry by the Texas State Board of Dental Examiners.

(32) DHS--This term referred to the Texas Department of Human Services; it now refers to HHSC.

(33) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, as a dietitian under Texas Occupations Code, Chapter 701 and one year of supervisory experience in dietetic service of a health care facility.

(34) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(35) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(36) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program or as a SNF in the Medicare program.

(37) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(C) any substance (other than food) intended to affect the structure or any function of the body of a human; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(38) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(39) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(40) Essential Caregiver--A family member, friend, guardian, volunteer, or other person designated for in-person visits by an individual, resident, or client or the individual's, resident's, or client's guardian or legally authorized representative (LAR) during a public health emergency or disaster. In case of conflict between an individual's, resident's, or client's selection and a guardian's selection on behalf of the individual, resident, or client, the guardian's selection prevails, in accordance with the terms of the guardianship. If an individual, resident, or client has no guardian and is unable to select an essential caregiver, the individual's, resident's, or client's LAR may select the essential caregiver.

(41) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(42) Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(43) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act (42 U.S.C. §1396r(a) - (d)). A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(44) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(45) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(46) Fiduciary agent--An individual who holds in trust another's monies.

(47) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(48) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(49) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(50) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act).

(51) HHSC--The Texas Health and Human Services Commission.

(52) HIV--Human Immunodeficiency Virus.

(53) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to HHSC.

(54) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(55) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(56) Inspection--Any on-site visit to or survey of an institution by HHSC for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(57) Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not to exceed 24 hours, until professional staff can develop a care plan to meet the resident's needs.

(58) IV--Intravenous.

(59) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(60) License holder--A person that holds a license to operate a facility.

(61) Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical therapist assistant occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; licensed social worker; or certified respiratory care practitioner.

(62) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(63) Life Safety Code--NFPA 101.

(64) Life safety features--Fire safety components required by NFPA 101, including building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(65) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §554.419 of this chapter (relating to Advance Directives)).

(66) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(67) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(68) Long-term care-regulatory--HHSC Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Medicaid participation.

(69) Major injury--An injury that qualifies as a major injury under NFPA 99.

(70) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(71) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(72) Managing local ombudsman--Has the meaning given in §88.2 of this title.

(73) MDS--Minimum data set. See RAI.

(74) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(75) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(76) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(77) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(78) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(79) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(80) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 557 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) Memory Care Disclosure Statement for Nursing Facilities--The HHSC-prescribed form a facility uses when the facility advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders.

(82) Memory care services--Services provided by a nursing facility that meet the needs of residents with a diagnosis of Alzheimer's disease or related disorders or a diagnosis of dementia.

(83) Misappropriation--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(84) MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with

the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(85) Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(86) NFPA--National Fire Protection Association.

(87) NFPA 99--NFPA 99, Health Care Facilities Code, 2012 Edition.

(88) NFPA 101--NFPA 101, Life Safety Code, 2012 Edition.

(89) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This term may include an individual who provides these services through an agency or under a contract with the facility. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(90) Nurse practitioner--An advanced practice registered nurse licensed by the Texas Board of Nursing in the role of Nurse Practitioner.

(91) Nurses' station--A nurses' station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(92) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(93) Nursing facility or nursing home--See definition of "facility."

(94) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(95) Objectives--See definition of "goals."

(96) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform.

(97) Ombudsman intern--Has the meaning given in §88.2 of this title.

(98) Ombudsman Program--Has the meaning given in §88.2 of this title.

(99) Paid feeding assistant--An individual who meets the requirements of §554.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(100) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(101) PASARR or PASRR--Preadmission Screening and Resident Review.

(102) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(103) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(104) Person-centered care--To focus on the resident as the locus of control, and to support the resident in making choices and having control over the resident's daily life.

(105) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(106) Physical restraint--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(107) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board to practice medicine.

(108) Physician assistant (PA)--An individual who is licensed as a physician assistant under Texas Occupations Code, Chapter 204.

(109) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed to practice podiatry by the Texas State Board of Podiatric Medical Examiners.

(110) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(111) Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(112) Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing or view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(113) PRN (pro re nata)--As needed.

(114) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with HHSC.

(115) Qualified mental health professional - community services--Has the meaning given in §301.303 of this title (relating to Definitions).

(116) Qualified surveyor--An employee of HHSC who has completed state and federal training on the survey process and passed a federal standardized exam.

(117) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and

implement appropriate action to identify and rectify substandard care and deficient facility practice.

(118) Quality measure report--A report that provides information derived from an MDS that provides a numeric value to quality indicators. This data is available to the public as part of the Nursing Home Quality Initiative (NHQI), and is intended to provide objective measures for consumers to make informed decisions about the quality of care in a nursing facility.

(119) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by HHSC who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of HHSC Regulatory Services Division.

(120) RAI--Resident Assessment Instrument. An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U. S. Department of Health and Human Services. At a minimum, this instrument must consist of the MDS core elements as specified by CMS; utilization guidelines; and Care Area Assessment process.

(121) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(122) Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term includes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(123) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(124) Resident--Any individual residing in a nursing facility.

(125) Resident group--A group or council of residents who meet regularly.

(126) Resident representative--

(A) Any of the following:

(i) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(ii) a person authorized by state or federal law (including agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(iii) legal representative, as used in Section 712 of the Older Americans Act (40 U.S.C. §3058g); or

(iv) the court-appointed guardian of a resident.

(B) This definition is not intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

(127) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(128) Restraint--A chemical or physical restraint.

(129) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(130) RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(131) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by HHSC.

(132) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate HHSC pays a nursing facility for services provided to the recipient.

(133) Secretary--Secretary of the U.S. Department of Health and Human Services.

(134) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(135) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(136) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(137) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by supervised employment providing social services in a health care setting.

(138) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(139) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(140) State Ombudsman--Has the meaning given in §88.2 of this title.

(141) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(142) Stay agreement--An agreement between a license holder and the executive commissioner that sets forth all requirements necessary to lift a stay and rescind a license revocation proposed under §554.2107 of this chapter (relating to Revocation of a License by the HHSC Executive Commissioner).

(143) Substandard quality of care violation--A violation of §554.401(a) or (b); §554.402(b), (c), or (m); §554.406(d) - (h); §554.417(a), (b), or (d); §554.425(b)(1); §554.504(a); §554.601; §554.602; §554.701; §554.703; §554.706(a), (c), (d)(1) - (5), or (e)(7); §554.801; §554.901; §554.904(2) or (4); §554.1501(5), (6), or (7); or §554.1601(e)(2) of this chapter (relating to Resident Rights) that constitutes:

(A) an immediate threat to resident health or safety;

(B) a pattern of or actual harm that is not an immediate threat; or

(C) a widespread potential for more than minimal harm, but less than an immediate threat, with no actual harm.

(144) Supervision--General supervision, unless otherwise identified.

(145) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(146) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(147) Survey agency--HHSC is the agency that, through contractual agreement with CMS, is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(148) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies.

(149) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(150) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(151) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act (42 U.S.C. §§401 - 434).

(152) Title XVI--Supplemental Security Income (SSI) of the Social Security Act (42 U.S.C. §§1381 - 1385).

(153) Title XVIII--Medicare provisions of the Social Security Act (42 U.S.C. §§1390 - 1395lll).

(154) Title XIX--Medicaid provisions of the Social Security Act (42 U.S.C. §§1396 - 1396w-5).

(155) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(156) Universal precautions--The use of barrier precautions and other precautions to prevent the spread of blood-borne diseases.

(157) Unreasonable confinement--Involuntary seclusion.

(158) Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(159) Vendor payment--Payment made by HHSC on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(160) Widespread--When the problem causing a violation is pervasive in a facility or represents systemic failure that affected or has the potential to affect a large portion or all of a facility's residents.

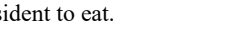
(161) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

(162) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204428
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161



SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

26 TAC §554.204

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204429
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

SUBCHAPTER E. RESIDENT RIGHTS

26 TAC §554.403

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.403. Notice of Rights and Services.

(a) The facility must inform the resident, both orally and in writing, in a language that the resident understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed.

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

(1) facility admission policies;

(2) a description of the protection of personal funds as described in §554.404 of this subchapter (relating to Protection of Resident Funds);

(3) the Texas Human Resources Code, Title 6, Chapter 102; or a written list of the rights and responsibilities contained in the Texas Human Resources Code, Title 6, Chapter 102;

(4) a written description of the services available through the Ombudsman Program. This information must be made available to each facility by the ombudsman program. Facilities are responsible for reproducing this information and making it available to residents, their families, and resident representatives;

(5) a written statement to the resident, the resident's next of kin, or guardian describing the facility's policy for:

(A) the drug testing of employees who have direct contact with residents; and

(B) the criminal history checks of employees and applicants for employment;

(6) HHSC rules and the facility's policies related to the use of restraint and involuntary seclusion. This information must also be given to the resident's legally authorized representative, if the resident has one; and

(7) facility essential caregiver policies and procedures during a public health emergency or disaster, and this information must also be given to the resident's legally authorized representative, if the resident has one.

(c) Upon admission of a resident, a facility must:

(1) provide written information to the resident's family representative, in a language the representative understands, of the right to form a family council; or

(2) inform the resident's family representative, in writing, if a family council exists, of the council's meeting time, date, location and contact person.

(d) Receipt of information in subsections (b) - (d) of this section, and any amendments to it, must be acknowledged in writing by all parties receiving the information.

(e) The facility must post a copy of the documents specified in subsections (a) and (b) of this section in a conspicuous location.

(f) The resident or the resident's legal representative has the following rights:

(1) upon an oral or written request to the facility, to access all records pertaining to the resident, including clinical records, within 24 hours (excluding weekends and holidays); and

(2) to purchase photocopies of all or any portion of the records upon request and two workdays advance notice to the facility.

(g) The resident has the right to be fully informed in language the resident understands of the resident's total health status, including the resident's medical condition.

(h) The resident has the right to refuse treatment, to formulate an advance directive (as specified in §554.419 of this subchapter (relating to Advance Directives), and to refuse to participate in experimental research.

(1) If the resident refuses treatment, the resident must be informed of the possible consequences.

(2) If the resident chooses to participate in experimental research, the resident must be fully notified of the research and possible effects of the research. The research may be carried on only with the full written consent of the resident's physician, and the resident.

(3) Experimental research must comply with Federal Drug Administration regulations on human research as found in 45 CFR, Part 46.

(i) The facility must inform a resident before, or at the time of admission, and periodically during the resident's stay (if there are any changes), of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(j) The facility must provide a written description of a resident's legal rights, which includes:

(1) a description of the manner of protecting personal funds, described in §554.404 of this subchapter;

(2) a posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as HHSC, the Ombudsman Program, the protection and advocacy network, and, in Medicaid-certified facilities, the Medicaid fraud control unit; and

(3) a statement that the resident may file a complaint with HHSC concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(k) The facility must inform a resident of the name, specialty, and way of contacting the physician responsible for the resident's care.

(l) Notification of changes.

(1) A facility must immediately inform the resident; consult with the resident's physician; and notify, consistent with the representative's authority, the resident representative when there is:

(A) an accident involving the resident that results in injury and has the potential for requiring physician intervention;

(B) a significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) a need to alter treatment significantly (that is, a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) a decision to transfer or discharge the resident from the facility.

(2) The facility also must promptly notify the resident and the resident representative, if any, when there is:

(A) a change in room or roommate assignment with the reason for the change provided in writing; or

(B) a change in resident rights under federal or state law or regulations as described in subsection (b) of this section.

(3) The facility must record and periodically update the address and phone number of the resident.

(m) Additional requirements for Medicaid-certified facilities. Medicaid-certified facilities must:

(1) provide the resident with the state-developed notice of rights under §1919(e)(6) of the Social Security Act (42 U.S.C. §1396r(e)(6));

(2) inform a resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of:

(A) the items and services that are included in nursing facility services provided under the State Plan and for which the resident may not be charged;

(B) those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services;

(3) inform each resident when changes are made to the items and services specified in paragraph (2)(A) and (B) of this subsection;

(4) provide a written description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under §1924(c) of the Social Security Act (42 U.S.C. §1396r-5(c)), which:

(A) is used to determine the extent of a couple's nonexempt resources at the time of institutionalization; and

(B) attributes to the community spouse an equitable share of resources that cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in the process of spending down to Medicaid eligibility levels; and

(5) prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(n) Additional requirements for certain facilities related to memory care and Alzheimer’s disease and related disorders. Facilities must provide the following HHSC forms:

(1) for a facility that advertises, markets, or otherwise promotes that it provides memory care services to residents, the Memory Care Disclosure Statement for Nursing Facilities, to each resident, disclosing as required by the Texas Health and Safety Code §242.0405 whether the facility is certified to provide specialized care and treatment for a resident with Alzheimer's disease and related disorders, to:

(A) each resident or resident representative; and

(B) each person seeking information about the facility's care and treatment of residents with Alzheimer's disease or related disorders or dementia; or

(2) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, HHSC Form 3641-A, Alzheimer's Disclosure Statement for Nursing Facilities, disclosing as required by the Texas Health and Safety Code §242.202 whether the facility is certified to provide specialized care and treatment for a resident with Alzheimer's disease and related disorders to:

(A) each resident or resident representative;

(B) each person seeking to become a resident of the facility or that person’s representative; and

(C) a person seeking information about the facility's care and treatment of residents with Alzheimer's disease and related disorders.

(o) Amended disclosure statement. A facility must provide an amended disclosure statement required by subsection (n)(1) and (2) of this section, to a resident, responsible party, or legal guardian at least

30 days before the change in the operation of the facility reflected in the amended disclosure statement is effective.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204430
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

SUBCHAPTER T. ADMINISTRATION

26 TAC §554.1913

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 §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204432
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

26 TAC §554.1921, §554.1935

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.1921. General Requirements for a Nursing Facility.

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Individuals who have met the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR) and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) A facility that ceases operation, temporarily or permanently, voluntarily or involuntarily, must provide notice to the residents and residents' relatives or responsible parties of closure. See §554.2310 of this chapter (relating to Nursing Facility Ceases to Participate) for additional notice requirements that apply to a Medicaid or Medicare certified facility.

(1) If the closure is voluntary, within one week after the date on which the decision to close is made, the facility must send written notice to residents' relatives or responsible parties stating that the closure will occur no earlier than 60 days after receipt of the notice.

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1) - (13) of this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by HHSC. The following items must be posted:

(1) the facility license;

(2) a complaint sign provided by HHSC giving the toll-free telephone number;

(3) a notice in a form prescribed by HHSC that inspection and related reports are available at the facility for public inspection;

(4) a concise summary prepared by HHSC of the most recent inspection report;

(5) a notice of HHSC toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;

(6) a notice that HHSC can provide information about the nursing facility administrator at (512) 438-2015;

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) the statement of resident rights provided in §554.401 of this chapter (relating to Introduction) and any additional facility requirements involving resident rights and responsibilities;

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Texas Health and Safety Code, §260A.014 and §260A.015; and that the facility has available for public inspection a copy of the Texas Health and Safety Code, Chapter 260A;

(10) a prominent and conspicuous sign for display in a public area of the facility that is readily available to the residents, employees, and visitors and that includes the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO HHSC BY CALLING 1-800-458-9858;

(11) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §554.403(n)(2) of this chapter (relating to Notice of Rights and Services);

(12) at each entrance to the facility, a sign that states that a person may not enter the premises with a handgun and that complies with Government Code §411.204; and

(13) daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

(f) The reports referenced in subsection (e)(3) of this section must be maintained in a well-lighted, accessible location and must include:

(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by HHSC; and

(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and HHSC has determined that the facility is in full compliance with the applicable requirement.

(g) The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.

(h) A facility must provide the telephone number for reporting cases of suspected abuse, neglect, or exploitation to an immediate family member of a resident of the facility upon the resident's admission to the facility.

(i) A copy of the Texas Health and Safety Code, Chapters 242 and 260A, must be available for public inspection at the facility.

(j) Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing and other personal property to prevent loss or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. See §554.416 of this chapter (relating to Personal Property).

(k) Each facility must comply with the provisions of the Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(l) Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the HHSC Internet website.

(m) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(n) A facility must provide notification about the EMR to an employee in accordance with 40 TAC §93.3 (relating to Employment and Registry Information).

(o) In addition to the initial search of the EMR and NAR, a facility must:

(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every 12 months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204436
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

SUBCHAPTER U. INSPECTIONS, SURVEYS, AND VISITS

26 TAC §554.2002

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204490
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

26 TAC §554.2326

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.2326. Medicaid Swing Bed Program for Rural Hospitals.

(a) Program description. HHSC operates the Medicaid Swing Bed Program for rural hospitals located in counties with populations of 100,000 or less. The Medicaid Swing Bed Program is modeled on Medicare's Swing Bed Program. The Medicaid Swing Bed Program permits participating rural hospitals to use their beds interchangeably to furnish both acute hospital care and nursing facility care to Medicaid recipients, when no care beds are available in nursing facilities (NFs) in the area. When a participating rural hospital furnishes NF nursing care to Medicaid recipients, HHSC makes payment to the hospital using the same procedures and the same Resource Utilization Group daily rates that the Texas Health and Human Services Commission authorizes for reimbursing NFs participating in the Texas Medicaid Nursing Home Program.

(b) Application to participate. Rural hospitals apply to HHSC to participate in the Medicaid Swing Bed Program. Each applicant must be located in a county with a population of 100,000 or less and must meet the qualifying requirements of the Medicare Swing Bed Program. Hospitals approved for participation enter into swing bed provider agreements with HHSC.

(c) Parallel participation in Medicare. A rural hospital participating in the Medicaid Swing Bed Program must:

(1) have a Medicare hospital provider agreement; and

(2) be Medicare-certified as a swing bed hospital in the Medicare Swing Bed Program.

(d) Applicability of Medicare requirements. Each participating rural hospital must satisfy all the requirements of the Medicare Swing Bed Program, except that Medicare's five-weekday transfer requirement and 15 percent payment limitation, as stated in 42 CFR §413.114(d)(2), do not apply for Medicaid reimbursement purposes.

(e) Applicability of NF requirements. From day one of the resident's stay, a rural hospital participating in the Medicaid Swing Bed Program must meet the requirements set forth in §554.2304(c) of this chapter (relating to Contract Requirements); §§554.2601 - 554.2608 and 554.2610 of this chapter (relating to Vendor Payment (Items and Services Included), Additional Charges (Items and Services Excluded from Vendor Payment), Therapeutic Home Visits Away from the Facility, Vendor Payment Information, Effective Date of Vendor Coverage, Supplementation of Vendor Payments, Penalties for Supplementation, Limitations on Provider Charges, and Medicare part A Skilled Nursing Facility Deductible and Coinsurance Payment); and Subchapter Y of this chapter (relating to Medical Necessity Determinations).

(f) Rural hospital (Medicaid swing bed facility) licensure and certification requirements. Pursuant to Texas Health and Safety Code §222.024 concerning the duplication of health care inspections and licensing, a rural hospital participating in the Medicaid Swing Bed Program satisfies licensure and certification requirements referenced in this section when it is currently licensed and certified as a hospital. However, in accordance with Texas Human Resources Code, §32.024, if the rural hospital's swing beds are used for more than one 30-day length of stay per year, per resident the hospital must comply with the full Nursing Facility Requirements.

(g) Rural hospital (Medicaid swing bed facility) administrator. The governing body of a rural hospital participating in the Medicaid Swing Bed Program satisfies the requirement to appoint a qualified full-time nursing facility administrator, found at §554.1902(b) of this chapter (relating to Governing Body), when it appoints a hospital administrator as its official representative and designates the administrator's responsibilities and authority, subject to the following exception. If the swing beds are used for more than one 30-day length of stay per year, per resident, the hospital's governing body must appoint a full-time licensed nursing facility administrator.

(h) Rural hospital (Medicaid swing bed facility) staff development requirements. A rural hospital participating in the Medicaid Swing Bed Program satisfies the staff development requirements found at §554.1929 of this chapter (relating to Staff Development) if the swing beds are used for no more than one 30-day length of stay per year, per resident.

(i) Rural hospital (Medicaid swing bed facility) transfer agreement. A rural hospital participating in the Medicaid Swing Bed Program is not required to have a transfer agreement with another hospital, as required by §554.1915 of this chapter (relating to Transfer Agreement).

(j) Rural hospital geographic region. The phrase "a participating rural hospital's geographic region" refers to an area that includes nursing facilities with which the hospital normally arranges transfers and all other nursing facilities in similar proximity to the hospital. If a hospital has no previous transfer practices on which to base a determination, the phrase "geographic region" refers to an area that includes all nursing facilities within 50 miles of the hospital except for facilities that the hospital demonstrates to be inaccessible to its patients.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204439
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 6, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 438-3161

♦ ♦ ♦

CHAPTER 745. LICENSING

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§745.273, 745.275, 745.277, and 745.435 in Title 26, Texas Administrative Code, Chapter 745, Licensing.

Amendments to §745.435 are adopted with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4254). This rule will be republished.

Amendments to §§745.273, 745.275, and 745.277 are adopted without changes to the proposed text, as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4254). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary 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.

These changes to HRC §42.048 took effect on September 1, 2021, and apply to the following operation types that may now change location without their license or certification being automatically revoked: (1) 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 already able to change location without these statutory changes. 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.

The amendments are also necessary to implement sections of statute added by S.B. 781, 86th Texas Legislature, Regular Session, 2019. This bill added HRC Chapter 42, Subchapter H, which includes requirements for GROs that provide treatment services to children with emotional disorders. CCR is clarifying in rule that if such 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.

CCR conducted two work group meetings: one on November 15, 2021, which included 32 invited participants with day care experience, and one on November 18, 2021, which included 12 invited participants with residential care experience. The workgroups met to discuss rule changes needed to implement the legislation and provided feedback on the drafted rules.

COMMENTS

The 31-day formal comment period ended August 22, 2022. During this period, HHSC received five comments regarding the proposed rules from four commenters, which included the Texas Alliance of Child and Family Services, a licensed child-care center; one set of parents; and one member of the public. A summary of comments relating to the rules and HHSC CCR's responses follows.

Comment: Regarding the proposed rules in general, one commenter simply stated that SECTIONS 5 and 9 of S.B. 225 are very important and need to be implemented.

Response: HHSC appreciates the support for the rules.

Comment: Regarding the proposed rules in general, one commenter expressed appreciation for HHSC's work in implementing legislation and carrying out federal guidance.

Response: HHSC appreciates the support for the rules.

Comment: Regarding §745.273, one commenter asked for clarification regarding an operation moving to a location "in a different community," as that language may be interpreted in multiple ways. The same commenter also recommended that HHSC consider whether the rule changes are in keeping with the statutory language in HRC §42.0461, which refers to the issuance of a license or expansion of capacity, and HRC §42.255, which allows county commissioners to request a hearing if needed at the time of an operation's license renewal.

Response: HHSC disagrees with the commenter's recommendation to clarify "in a different community." Section 745.275 provides context for when a GRO would need to meet public hearing requirements related to a change in location within a county with a population of less than 300,000. Through its repeated reference to "the governing body of a community," §745.275 implicitly conveys that the GRO would have to meet public hearing requirements related to the new location if the new location is in a part of the county served by a governing body that does not serve the prior location. An obvious example is when the GRO

relocates to a different city or town within the county; other examples include a different hospital district, housing authority, or special district. The bottom line is that HRC §42.0461 recognizes that a GRO located in a county with a population of under 300,000 could have a significant effect on the law enforcement, school district, and community resources of that county, and that persons have the right to weigh in on how the presence of a GRO may affect those resources. Allowing the GRO to change location to a part of the county with different resources without requiring the GRO to meet the public hearing requirement in relation to the new location would circumvent the purpose of the public hearing requirement. Accordingly, HHSC also disagrees with the commenter's implication that the rule changes are not in line with statutory language for when a public hearing is required. Regarding the commenter's mentioning of HRC §42.255, HHSC adopted §745.487 (relating to When is a public hearing required for the renewal of license?) in April 2021 to implement the statute and allow HHSC to hold a public hearing regarding the renewal of the license of a GRO that provides treatment services to children with emotional disorders, if requested by the commissioner's court in the county in which the operation is located. Lastly, if HHSC decides at some point to develop more specific criteria for what constitutes a "community," HHSC would seek input from providers, stakeholders, and the public during the rulemaking process.

Comment: Regarding §745.435, one commenter expressed support for the changes, which allow certain child-care operations to relocate without their licenses or certificates being automatically revoked.

Response: HHSC appreciates the support for the rule.

Comment: Regarding §745.435, one commenter expressed support for the changes, but recommended that language be added to ensure an operation's permit number does not change due to relocation.

Response: HHSC appreciates the support for the rule. HHSC agrees with the commenter's recommendation and revised the rule to include language indicating that an operation's amended permit will retain the same "permit number" that is on the original permit.

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 GRO 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 HRC 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.

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

TRD-202204352
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 23, 2022
Proposal publication date: July 22, 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 GRO 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 HRC Chapter 42.

§745.435. What must I do if I relocate my operation after I receive my license or certification?

(a) If you are going to relocate your operation permanently to a new location, you must notify us as early as possible before the move and meet the notification requirements in the following table.
Figure: 26 TAC §745.435(a)

(b) If you fail to notify us before you relocate, we may deny you an amendment to your permit that would allow you to operate at the new location.

(c) You must notify us of the address of your new location by completing a form that we provide you. After we inspect your new location, we will amend your permit to reflect the new address if:

(1) 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.

(d) If we amend your permit to reflect a new address as described in subsection (c) of this section:

(1) The issuance date and permit number 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 adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204353
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 23, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 438-3269

♦ ♦ ♦

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §748.153 and §748.303 in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

Amendments to §748.153 and §748.303 are adopted without changes to the proposed text, as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4257). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary 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.

These changes to HRC §42.048 took effect on September 1, 2021, and apply to the following operation types that may now change location without their license or certification being automatically revoked: (1) 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. This bill amended HRC §42.048 by adding subsection (e-4), which allows 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.

CCR conducted two work group meetings: one on November 15, 2021, which included 32 invited participants with day care experience, and one on November 18, 2021, which included 12 invited participants with residential care experience. The workgroups met to discuss rule changes needed to implement the legislation and provided feedback on the drafted rules.

COMMENTS

The 31-day formal comment period ended August 22, 2022. During this period, HHSC received three comments regarding the proposed rules from two commenters: the Texas Alliance of Child and Family Services, a licensed child-care center, and one member of the public. A summary of comments relating to the rules and HHSC CCR's responses follows.

Comment: Regarding the proposed rules in general, one commenter simply stated that SECTIONS 5 and 9 of S.B. 225 are very important and need to be implemented.

Response: HHSC appreciates the support for the rules.

Comment: Regarding the proposed rules in general, one commenter expressed appreciation for HHSC's work in implementing legislation and carrying out federal guidance.

Response: HHSC appreciates the support for the rules.

Comment: Regarding §748.303, one commenter recommended that HHSC more comprehensively review the list of reporting requirements for serious incidents to determine if all the incidents truly need to be reported as soon as they are currently required to be. The commenter mentioned that there are 20 different categories listing various type of incidents that allow for 38 possible deficiencies with the standard's subsections being weighted from medium-high to high. The commenter expressed concern for the "day-to-day compliance load for the regulated community." In addition, with regard to reporting as soon as possible but no later than 24 hours after relocating or providing care at a location not noted on the operation's permit, the commenter recommended the reporting time frame be more lenient and that it begin "after the safety of the children...has been assured and the situation has stabilized such that the operation can reasonably be expected to have awareness of the relocation or additional child and the ability to make the report."

Response: HHSC disagrees with the commenter's recommendations to revise the rule. HHSC recently evaluated the content and time frames for §748.303, during the comprehensive review of Chapter 748, and adopted rule changes resulting from that review took effect in April 2022. The reporting requirements and time frames that HHSC is currently adding to that rule implement HRC §42.048(e-4), which provides that CCR may authorize a residential child-care operation to temporarily relocate or care for any child at a different location so the operation can comply with a declared state of disaster. The time frame stated in the rules for reporting these serious incidents is "as soon as possible, but no later than 24 hours" after the occurrence of the relevant incident. This time frame for notifying CCR and parents is necessary to ensure that parents know the whereabouts of their children during a disaster. Further, this time frame is easily measurable when the date of relocation or provision of care at an alternate location is known. By comparison, the time frame and revisions suggested by the commenter would not provide clarity as to when the operation would have to make a report to CCR and parents; this lack of clarity could delay notifications to CCR and parents and result in inconsistent regulation.

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 GRO 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 HRC 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.

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

TRD-202204354
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 23, 2022
Proposal publication date: July 22, 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 GRO 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 HRC 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.

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

TRD-202204356
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 23, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 438-3269

♦ ♦ ♦

CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§749.153, 749.503, and 749.2551 in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

Amendments to §749.2551 and §749.503 are adopted with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4259). These rules will be republished.

Amendments to §749.153 are adopted without changes to the proposed text, as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4259). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary 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.

These changes to HRC §42.048 took effect on September 1, 2021, and apply to the following operation types that may now change location without their license or certification being automatically revoked: (1) 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 already able to change location without to these statutory changes made. 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 by adding subsection (e-4), which allows 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.

HRC §42.048(e-4) took effect on May 15, 2021, and applies to GROs and CPAs. The amendments in Chapter 749 address temporary relocation of children in foster homes to be consistent with the bill's requirements for CPAs, which are tasked with overseeing foster homes.

The amendments are also necessary to align foster home capacity requirements related to 42 United States Code (U.S.C.) §671(a), which includes requirements that a state must meet to have a federally approved IV-E plan.

CCR conducted two work group meetings: one on November 15, 2021, which included 32 invited participants with day care experience, and one on November 18, 2021, which included 12 invited participants with residential care experience. The work-

groups met to discuss rule changes needed to implement the legislation and provided feedback on the drafted rules.

COMMENTS

The 31-day formal comment period ended August 22, 2022. During this period, HHSC received four comments regarding the proposed rules from two commenters: the Texas Alliance of Child and Family Services, a licensed child-care center, and one member of the public. A summary of comments relating to the rules and HHSC CCR's responses follows.

Comment: Regarding the proposed rules in general, one commenter simply stated that SECTIONS 5 and 9 of S.B. 225 are very important and need to be implemented.

Response: HHSC appreciates the support for the rules.

Comment: Regarding the proposed rules in general, one commenter expressed appreciation for HHSC's work in implementing legislation and carrying out federal guidance.

Response: HHSC appreciates the support for the rules.

Comment: Regarding §749.503, one commenter recommended that HHSC more comprehensively review the list of reporting requirements for serious incidents to determine if all the incidents truly need to be reported as soon as they are currently required to be. The commenter mentioned that there are 20 different categories listing various type of incidents that allow for 38 possible deficiencies with the standard's subsections being weighted from medium-high to high. The commenter expressed concern for the "day-to-day compliance load for the regulated community." In addition, with regard to reporting as soon as possible but no later than 24 hours after relocating the CPA office or foster home or providing care at a location not noted on the foster home's verification, the commenter recommended the reporting time frame be more lenient and that it begin "after the safety of the children…has been assured and the situation has stabilized such that the operation can reasonably be expected to have awareness of the relocation or additional child and the ability to make the report."

Response: HHSC disagrees with the commenter's recommendations to revise the rule. HHSC recently evaluated the content and time frames for §749.503, during the comprehensive review of Chapter 749, and adopted rule changes resulting from that review took effect in April 2022. The reporting requirements and time frames that HHSC is currently adding to that rule implement HRC §42.048(e-4), which provides that CCR may authorize a residential child-care operation to temporarily relocate or care for any child at a different location so the operation can comply with a declared state of disaster. The time frame stated in the rules for reporting these serious incidents is "as soon as possible, but no later than 24 hours" after the occurrence of the relevant incident. This time frame for notifying CCR and parents is necessary to ensure that parents know the whereabouts of their children during a disaster. Further, this time frame is easily measurable when the date of relocation or provision of care at an alternate location is known. By comparison, the time frame and revisions suggested by the commenter would not provide clarity as to when the operation would have to make a report to CCR and parents; this lack of clarity could delay notifications to CCR and parents and result in inconsistent regulation.

Comment: Regarding §749.2551, one commenter recommended that HHSC not delete subsection (d) as proposed because the subsection allows a CPA to ask for a capacity exception for a foster home to care for seven or eight children. The commenter also recommended that HHSC consider including the additional exceptions permitted by 42 U.S.C. §672(c)(1)(B), particularly those allowing a parenting youth in care to remain with the parent's child and a family with special training or skills to provide care to a child with a severe disability.

Response: HHSC partially agrees with the commenter's recommendation to reconsider the deletion of subsection (d). Instead of deleting the entire subsection, HHSC will retain the first sentence of subsection (d) in the revised rule with a slight modification to correct the TAC title reference. The second sentence of subsection (d) will remain deleted because the language is superfluous and not integral to meeting the intent of the subsection. In addition, HHSC agrees with the commenter's recommendation to include all exceptions allowed by federal law and revised subsection (b) to allow a parenting youth in care to remain with the child of the parenting youth and to allow a family with special training or skills to provide care to a child with a severe disability. To ensure that HHSC only grants variances that are consistent with additional exceptions permitted by state and federal law, including federal law related to Title IV-E funding requirements, HHSC is adding language to subsection (d) highlighting that HHSC will consider any limitations in state or federal law. A separate rule project may also include a cross reference to this subsection in Chapter 745, Subchapter J (Waivers and Variances for Minimum Standards), to further ensure that Texas will meet Title IV-E funding requirements.

HHSC made a change to correct a reference in paragraph (9) in Figure: 26 TAC §749.503(e).

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

26 TAC §749.153

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 GRO 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 HRC 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.

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

TRD-202204357
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 23, 2022
Proposal publication date: July 22, 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 §749.503

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 GRO 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 HRC Chapter 42.

§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)

(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)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204358

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 23, 2022
Proposal publication date: July 22, 2022
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 amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO 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 HRC Chapter 42.

§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)

(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 is placed in the home for the purpose of allowing:

(A) Siblings to remain together;

(B) A child with an established meaningful relationship with the foster family (including a relative or close family friend) to remain with the family;

(C) A parenting youth in care to remain with the child of the parenting youth; or

(D) A family with special training or skills to provide care to a child who has a severe disability;

(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)

(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 26 TAC Chapter 745, Subchapter J of this title (relating to Waivers and Variances for Minimum Standards) and meeting the requirements of that subchapter. When processing a request for a variance related to a foster home's capacity, we will consider any limitations in state or federal law.

(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 (relating to May a foster home accept adults into the home for care?).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204359
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 23, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 438-3269

♦ ♦ ♦

CHAPTER 925. RESEARCH INVOLVING HEALTH AND HUMAN SERVICES COMMISSION SERVICES

26 TAC §§925.1 - 925.11

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) Title 1, Part 1, new Chapter 925, concerning Research Involving Health and Human Services Commission Services, consisting of §925.1, concerning Purpose; §925.2, concerning Application; §925.3, concerning Definitions; §925.4, concerning General Principles; §925.5, concerning Designated Institutional Review Board; §925.6, concerning Designated Institutional Review Board Functions and Operations; §925.7, concerning Review and Approval of Proposed Research; §925.8, concerning Informed Consent; §925.9, concerning Using and Disclosing Protected Health Information in Research; §925.10, concerning Investigation of Allegations of Misconduct in Science; and §925.11, concerning Responsibilities of the Institutional Review Board 2.

Sections 925.3, 925.6, 925.7, and 925.8 are adopted with changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3917). These rules will be republished.

Sections 925.1, 925.2, 925.4, 925.5, 925.9, 925.10, and 925.11 are adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3917). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rules is to move HHSC rules in 25 TAC Chapter 414, Subchapter P and 40 TAC Chapter 4, Subchapter P to 26 TAC Chapter 925 as part of consolidating HHSC rules. The adopted rules have up-to-date agency information, research protocols, population language, and includes plain language where possible. The adoption of repealed 25 TAC Chapter 414, Subchapter P, concerning Research in TDMHMR Facilities, and repealed 40 TAC Chapter 4, Subchapter P, concerning Research in State Facilities, are published simultaneously elsewhere in this issue of the *Texas Register.*

The adopted rules describe the components and use of an institutional review board for the review of research requests and activities pertaining to mental health, substance use, and intellectual or developmental disabilities services within HHSC, involving one or more of the following: HHSC in-patient or community-based mental health services; HHSC community-based substance use services; HHSC intellectual or developmental disabilities services; data owned or created regarding individuals receiving HHSC services; or related HHSC resources (e.g., employees, property, and non-public information).

COMMENTS

The 31-day comment period ended August 8, 2022.

During this period, HHSC received comments regarding the proposed rules from the Texas Medical Association (TMA). A summary of comments relating to the rules and HHSC's responses follow.

Comment: TMA requested clarification of the research review process when an external institutional review board (IRB) is the designated IRB. TMA recommended edits to the rules regarding which IRB or person has final approval or disapproval and the timing within the review process this decision occurs. Additionally, TMA recommended editing the rules to include the process for and steps following the determination by the IRB2 that an additional review is needed.

Response: HHSC agrees with the comment and added the following language to §925.7(e)(1)(D) for clarity, "Any approval by an external IRB is subject to HHSC policy requirements."

Comment: TMA recommended modifying §925.8(a)(2)(A) to include that the qualified professional determining whether an individual has capacity to consent to a research study is independent of the research study.

Response: HHSC disagrees and declines to revise the rule in response to this comment. A primary function of the IRB, which is an independent board, is to review the appropriateness of an investigator's informed consent process, which includes determining the capacity to consent by individuals who may participate in the research. The Code of Federal Regulations (CFR) Title 45, Section 46.116, governing IRB activities, sets forth requirements on how informed consent must be obtained and does not require the qualified professional to be independent of the research study. Section 925.8 requires an investigator to ensure compliance with 45 CFR §46.116.

Comment: TMA recommended adding language to §925.8(a)(7) to require that the preferred modes of communication for prospective human subjects receiving HHSC intellectual and developmental services are considered for purposes of assessing their capacity to consent or attempting to obtain their consent or assent to participation.

Response: HHSC agrees with the recommendation and modified §925.8(a)(7) to include, "The procedures must take into consideration a prospective human subject's preferred method of communication for consent or objection."

A minor editorial change to §925.3(12) was made to include a section symbol; and a minor editorial change was made to §925.6(a)(1) to correct a reference.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §574.154.

§925.3. Definitions.

The following words and terms have the following meanings when used in this chapter.

(1) Authorization--The written permission given by an individual who is participating in a research study or the individual's legally authorized representative to use or disclose certain protected health information related to the research study.

(2) Children--Consistent with 45 Code of Federal Regulations §46.402(a), individuals who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.

(3) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations published in the *Federal Register* by the executive departments and agencies of the Federal Government.

(4) Designated institutional review board--The institutional review board whose purpose is to review, approve, and monitor proposed research studies as well as oversee the conduct of approved research, which includes:

(A) an external institutional review board established and operated by a non-Texas Health and Human Services Commission organization with an active Federalwide Assurance (see, 48 C.F.R. Subpart §370.3 Acquisitions Involving Human Subjects) approved by the Office for Human Research Protection (OHRP); and

(B) IRB2.

(5) HHSC--Texas Health and Human Services Commission.

(6) HHSC services--Services provided by HHSC or an HHSC-contracted provider. For purposes of this chapter, HHSC services are:

(A) services delivered in state psychiatric hospitals;

(B) services delivered in state supported living centers;

(C) community-based mental health services;

(D) intellectual or developmental disabilities services;

(E) substance use prevention, intervention, and treatment services; and

(F) services delivered by other HHSC-contracted behavioral health providers required to submit data and information to HHSC.

(7) HHSC services authorized person--A person with the authority to allow research at the proposed research site where HHSC services are delivered (i.e., superintendent, director, or chief executive officer).

(8) Human subject--Consistent with 45 CFR §46.102(e)(1), a living individual about whom an investigator (whether professional or student) conducting research:

(A) obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or

(B) obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

(9) Individual--A person who previously received, or is currently receiving, HHSC services.

(10) Informed consent--The knowing approval by an individual or an individual's legally authorized representative to participate in a research study, given under the individual's or legally authorized representative's decision without undue influence or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(11) Institutional review board (IRB)--A board that reviews and approves proposed research, as well as oversees the conduct of approved research.

(12) Intellectual or developmental disability (IDD)--Intellectual disability consistent with Texas Health and Safety Code §591.003 or a disability that meets the criteria described in the definition of "persons with related conditions" in 42 CFR §435.1010.

(13) Investigational medication or device--Any drug, biological product, or medical device under investigation for human use that is not currently approved by the U.S. Food and Drug Administration for the indication being studied.

(14) Investigator--A principal investigator, a co-investigator, or a person who has direct and ongoing contact with human subjects participating in a research study or with prospective human subjects.

(15) IRB2--The Mental Health, Substance Use and Intellectual or Developmental Disabilities Institutional Review Board, which is established and operated by the Texas State Hospital Central Administration.

(16) Legally authorized representative (LAR)--Consistent with 45 CFR §46.102(i), an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure or procedures involved in the research. If there is no applicable law addressing this issue, LAR means an individual recognized by institutional policy as acceptable for providing consent in the non-research context on behalf of the prospective subject to the subject's participation in the procedure or procedures involved in the research.

(17) Limited data set--Consistent with 45 CFR §164.514(e), protected health information of an individual or of relatives, employers, or household members of an individual that excludes the following direct identifiers:

(A) names;

(B) postal address information, other than town or city, state, and zip code;

(C) telephone numbers;

(D) fax numbers;

(E) electronic mail addresses;

(F) social security numbers;

(G) medical record numbers;

(H) health plan beneficiary numbers;

(I) account numbers;

(J) certificate or license numbers;

(K) vehicle identifiers and serial numbers;

(L) device identifiers and serial numbers;

(M) Web universal resource locators (URLs);

(N) Internet protocol (IP) address numbers;

(O) biometric identifiers, including finger and voice prints; and

(P) full face photographic images and comparable images.

(18) Minimal risk--The probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.

(19) Misconduct in science--The fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

(20) Notice of privacy practices--A written notice describing:

(A) the uses and disclosures of protected health information that may be made; and

(B) the individual's rights and the legal duties of the HHSC service with respect to protected health information.

(21) Office for Human Research Protection (OHRP)--The office that provides leadership in the protection of the rights, welfare, and wellbeing of human subjects involved in research conducted or supported by the U.S. Department of Health and Human Services.

(22) Principal investigator--The investigator identified as responsible for conducting a research study.

(23) Privacy coordinator--An HHSC staff member who is responsible for working with the Texas Health and Human Services Privacy Division to implement the policies and procedures relating to state and federal privacy laws.

(24) Protected health information (PHI)--

(A) Any information that identifies or could be used to identify an individual, whether oral or recorded in any form, that relates to:

(i) the past, present, or future physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) the payment for the provision of health care to the individual.

(B) The term includes:

(i) an individual's name, address, date of birth, or Social Security number;

(ii) an individual's medical record or case number;

(iii) a photograph or recording of an individual;

(iv) statements made by an individual, either orally or in writing, while seeking or receiving HHSC services;

(v) any acknowledgment that an individual is seeking or receiving or has sought or received HHSC services;

(vi) direct identifiers of relatives, employers, or household members of the individual; and

(vii) any information by which the identity of an individual can be determined either directly or by reference to other publicly available information.

(C) The term does not include:

(i) health information that has been de-identified in accordance with 45 CFR §164.514(b); and

(ii) employment records.

(25) Research--Consistent with 45 CFR §46.102(l), a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this chapter, the following activities are not deemed as research.

(A) Scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.

(B) Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities include those associated with providing timely situational awareness and priority setting during an event or crisis that threatens public health (including natural or man-made disasters).

(C) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.

(D) Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

(26) Rights officer--A person who oversees the research site to protect and advocate for the rights of individuals receiving HHSC services.

(27) State Hospital Central Administration--The HHSC office that is responsible for the management and oversight of the state hospital system.

(28) Texas Health and Human Services Commission Privacy Division--The HHSC workforce responsible for creating and maintaining privacy policies and procedures and investigating potential unauthorized disclosures of protected health information, personally identifiable information, and sensitive personal information. The Privacy Division is responsible for declaring whether an incident is a breach of information and notifying or recommending notification to affected individuals. The Privacy Division acts as a resource and subject matter experts to HHSC.

§925.6. Designated Institutional Review Board Functions and Operations.

(a) Each designated institutional review board (IRB) shall:

(1) follow its written policies and procedures as described in §925.5(f) of this chapter (relating to Designated Institutional Review Board);

(2) function in accordance with 45 Code of Federal Regulations (CFR) §46.108;

(3) ensure proposed research is reviewed and approved in accordance with §925.7 of this chapter (relating to Review and Approval of Proposed Research);

(4) exercise appropriate oversight to ensure:

(A) its policies and procedures designed for protecting the rights, privacy, and welfare of human subjects are being applied; and

(B) research is being conducted in accordance with the approved protocol;

(5) maintain records of its operations in accordance with 45 CFR §46.115;

(6) maintain documentation of its continuing review of all approved and active research protocols; and

(7) maintain documentation of any unanticipated serious problems or events involving risks to the human subjects or others.

(b) Each designated IRB will suspend or terminate research that is not being conducted in accordance with the IRB's requirements or that has been associated with significant unexpected harm to human subjects. If an IRB suspends or terminates research, the IRB must promptly notify the following in writing of the suspension or termination and include a statement of the reasons for the IRB's action:

(1) the principal investigator;

(2) the appropriate HHSC services authorized person; and

(3) the IRB2.

(c) When IRB2 is not the designated IRB for a research protocol, a reliance agreement will be signed by the IRB2 chair outlining all oversight responsibilities and obligations in order to ensure the protection of human subjects.

§925.7. Review and Approval of Proposed Research.

(a) Proposed research must be submitted to the designated institutional review board (IRB) and contain written information for the IRB to determine whether the requirements described in 45 Code of Federal Regulations (CFR) §46.111 are satisfied.

(b) Each designated IRB shall review all proposed research in accordance with 45 CFR §46.109.

(c) Each designated IRB has the authority to approve, require modifications to, or disapprove any proposed research. Approval of proposed research shall be based on:

(1) consideration of the information described in 45 CFR §46.111;

(2) the designated IRB's verification that the requirements in 45 CFR §46.111, §925.4 of this chapter (relating to General Principles), and §925.8 of this chapter (relating to Informed Consent) are met; and

(3) the designated IRB's verification that procedures for obtaining and documenting authorization to use or disclose protected health information (PHI) meet the requirements in 45 CFR §164.508, unless:

(A) the designated IRB approves a waiver or alteration of the authorization requirement as permitted in §925.9(b) of this chapter (relating to Using and Disclosing Protected Health Information in Research); or

(B) the designated IRB determines and documents that:

(i) the data needed for the research is contained in a limited data set and the investigator will comply with the requirements in 45 CFR §164.514(e), including the execution of a data use agreement; or

(ii) the data needed for the research is limited to decedents' PHI and documentation submitted by the investigator meets the requirements in 45 CFR §164.512(i)(1).

(d) The designated IRB may take into consideration deliberations and reviews from another IRB that has approved the protocol for a specific research proposal, but the designated IRB is ultimately responsible for approval of the proposed research.

(e) Research review and documentation process.

(1) External IRB as the designated IRB. The research review and documentation process for research using an external IRB is generally as follows.

(A) The IRB2 screens the research proposal and, if determined appropriate for implementation, the investigator submits the research proposal to the external IRB for review.

(B) The external IRB reviews the research proposal.

(C) The investigator informs the IRB2 of the external IRB's approval or disapproval. The IRB2 informs the Texas Health and Human Services Commission (HHSC) services authorized person of the external IRB's approval or disapproval.

(D) Any approval by an external IRB is subject to HHSC policy requirements.

(2) IRB2 as the designated IRB. The research review and documentation process for research involving HHSC services using the IRB2 is generally as follows.

(A) The principal investigator submits the proposal to the IRB2.

(B) The IRB2 reviews the research proposal.

(C) The IRB2 informs the HHSC services authorized person of the IRB2's approval or disapproval and recommendations, if any.

(D) If the research proposal is approved by the IRB2, the HHSC services authorized person considers the IRB2's recommen-

dations, if any, and either approves or disapproves the research proposal for implementation.

(f) In addition to approval by the designated IRB and HHSC services authorized person, review and approval by the chief medical officer or chief medical director of the state hospitals, state supported living centers, or other entity primarily responsible for the health and safety of the research subjects, as applicable, is required for any research proposal involving:

(1) a placebo as the primary medication therapy;

(2) medication or doses of medication as the primary medication therapy with an unknown effectiveness for the targeted disorder or condition; or

(3) an investigational medication or device.

(g) The review process for proposed research may require additional steps as necessary, (e.g., in the event a proposal is initially rejected).

(h) The HHSC services authorized person is responsible for ensuring that all investigators are qualified to perform any clinical duties assigned to them and are knowledgeable of HHSC's rules governing the care and protection of individuals as described in 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services) and 40 TAC Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability).

§925.8. Informed Consent.

Requirements for approval of proposed research. Investigators shall ensure:

(1) procedures for obtaining and documenting informed consent meet the requirements in 45 Code of Federal Regulations (CFR) §46.116 and 45 CFR §46.117 and address:

(A) any extension of the subject's length of stay because of participation in the research;

(B) the subject's ability to receive the medication or device after the research has concluded if the research involves an investigational medication or device;

(C) whether the research involves the use of a placebo and the likelihood of assignment to the placebo condition;

(D) whether the research involves medication or doses of medication which are known to be ineffective for the targeted disorder or condition and the likelihood of assignment to such medication or doses of medication; and

(E) any risk of deterioration in the subject's condition and the potential consequences of such deterioration (e.g., an extension in the length of stay, or the use of interventions, such as restraint, seclusion, or emergency medications);

(2) there are procedures to ensure prospective human subjects are assessed for capacity to consent for research protocols that present greater than minimal risk, and:

(A) provide for a qualified professional to assess prospective human subjects for capacity to consent;

(B) identify and document who will conduct the assessments; and

(C) describe the nature of the assessment and justification if less formal procedures to assess capacity will be used;

(3) the requirements in 45 CFR §46.408 are met if children are the proposed human subjects;

(4) there are procedures that:

(A) each prospective human subject or the subject's legally authorized representative (LAR) understands the information provided before obtaining consent to research participation; and

(B) if consent is obtained from the subject's LAR, attempts are made, to the extent possible given the prospective subject's capacity, to obtain the human subject's assent to participation. Assent is an affirmative agreement of a prospective human subject to participate in research, which is obtained when the subject does not have the capacity or legal authority to consent;

(5) there are adequate safeguards to minimize the possibility of coercion or undue influence. For example, the possible advantages of the subject's participation in the research may not be so valuable as to impair the subject's ability to weigh the risks of the research against those advantages. Possible advantages within the limited choice environment may include enhancement of general living conditions, medical care, quality of food, or amenities; opportunity for earnings; or a change in commitment status;

(6) there are procedures for ensuring a prospective human subject's objection to enrollment in research or a human subject's objection to continued participation in a research protocol is heeded in all circumstances, regardless of whether the subject or the subject's LAR has given consent. Objection may be conveyed verbally, in writing, behaviorally, or by other indications or means; and

(7) procedures to ensure, throughout the course of the research study, human subjects' comprehension and capacity are assessed and enhanced since informed consent is an ongoing process. The procedures must take into consideration a prospective human subject's preferred method of communication for consent or objection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204443
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 27, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 438-3049

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER G. NONPROFIT ORGANIZATIONS

31 TAC §51.168

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022 adopted new 31 TAC §51.168,

concerning Promotion of Hunting and Fishing by Military Veterans, without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3924). The rule will not be republished.

The new rule provides a process for selecting one or more non-profit partners (NPP) that exclusively serve veterans to promote hunting and fishing by those veterans and guidelines under which a representative of or a veteran served by an approved nonprofit partner may engage in hunting or fishing activities under the section.

House Bill 1728, enacted during the most recent regular session of the Texas Legislature, authorized the department to select and cooperate with one or more nonprofit partners that exclusively serve veterans to promote hunting and fishing by those veterans. Under the provisions of the bill, a veteran who is a Texas resident and who is served by a selected nonprofit may hunt or fish on one day without holding the required license for that activity if accompanied by a representative of the nonprofit partner (NPP) who holds the appropriate license. The bill requires the department to adopt rules governing "guidelines under which a representative of or a veteran served by a nonprofit partner may engage in hunting or fishing activities."

Subsection (a) of the new rule provides that the selection of NPPs shall be made according to existing department rules regarding nonprofit partners, as applicable, and is restricted to NPPs serving residents of Texas who are veterans of the U.S. armed forces. The provision is necessary to provide a structure for agency interaction with qualified NPPs and to comply with statutory requirements restricting the types of NPPs authorized to engage in the activities regulated under the rule.

Subsection (b) establishes guidelines for participation in hunting and fishing activities pursuant to the section. The new rule requires all hunting and angling activities to be provided by a selected NPP to be on private lands and/or public waters, which is necessary to ensure that hunting opportunity provided under the section is additive to and not at the expense of hunting opportunity for the general public on public lands. The new subsection also requires all hunting and angling activity under the section to be in accordance with all regulations that prescribe seasons, bag limits, gear restrictions, lawful means and methods, and special provisions governing the take of wildlife resources, which is necessary because the department has a statutory obligation to conserve, protect, and manage the fish and wildlife resources of the state in order to provide the public with the benefits of enjoyment of those resources and therefore believes that all hunting and fishing activities should be conducted consistent with existing regulations intended to accomplish that duty. The new subsection also requires that the selection of veterans for participation in hunting and fishing activities under the section be by a fair and equitable method advertised by public notice, which is necessary to prevent favoritism or the appearance of favoritism in allocating opportunity for qualifying persons to enjoy the benefits of wildlife resources, which are a public trust resource.

Additionally, the new subsection requires all hunting and fishing opportunity provided under the section to be at no cost to participants, which is necessary in order to ensure that measures intended as a gesture of gratitude for national service are not misused by unscrupulous persons as an opportunity for monetary gain. The new subsection also imposes reporting and recordkeeping requirements necessary for the department to ensure that all hunting and angling activities are consistent with applicable statutory and regulatory provisions, including provisions governing eligibility for participation, documentation of the identities of participants, and the dates, times, and locations that regulated activities took place, which is necessary for the department to verify that activities under the section are conducted in accordance with both legislative intent and the regulations of the commission. Finally, the new section would waive stamp endorsement requirements and provide for documentation of resources taken by participants, which is necessary because by statute, participants are not required to obtain or possess a hunting or fishing license and therefore will not have tags or stamp endorsements required of other hunters, necessitating alternative documentation processes for the department to be able to determine that all hunting and angling activity is conducted in a lawful manner.

The department received no comments opposing adoption of the rule as proposed.

The department received three comments supporting adoption of the rule as proposed.

The new rule is adopted under the authority of Parks and Wildlife Code, §11.208, which allows the commission to establish by rule the criteria under which the department may select the nonprofit partner and the guidelines under which a representative of or a veteran served by a nonprofit partner may engage in hunting or fishing activities provided by the nonprofit partner; Parks and Wildlife Code, §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or other similar requirements or provisions in Chapter 42; Parks and Wildlife Code, §43.402, which authorizes the commission to exempt by rule a person from requirements regarding purchase and possession of saltwater fishing stamps; §43.652, which authorizes the commission to exempt a person or class of persons by rule from the upland or migratory game bird stamp requirements; §43.802, which authorizes the commission to exempt a person by rule from the freshwater fishing stamp requirement; and §46.0086, which authorizes the commission by regulation to exempt a person from the finfish tag requirement of that chapter.

The proposed new rule affects Parks and Wildlife Code, Chapters 11, 42, 43, and 46.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204412
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 24, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 389-4775

♦ ♦ ♦

CHAPTER 53. FINANCE
SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.15

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022, adopted an amendment to 31 TAC §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits, without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3925). The rule will not be republished.

The amendment removes the cormorant control permit from the fee catalogue. In another rule action published elsewhere in this issue of the *Texas Register,* the department adopts the repeal of 31 TAC §65.901, concerning Cormorant Control Permit, which the department no longer has the authority to issue. Therefore, references to that permit are being removed from various sections of department rules.

The department received no comments opposing adoption of the proposed amendment.

The department received eight comments supporting adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204414
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 24, 2022
Proposal publication date: July 8, 2022
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 Commission in a duly noticed meeting on August 25, 2022 adopted 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, with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4267). The rules will be republished.

The new rules constitute new Chapter 56 and implement the directives of the Texas Sunset Advisory Commission by establishing a uniform process to govern 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 new subchapter.

Under Government Code, Chapter 325, the Sunset Advisory Commission is required 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.

New §56.1, concerning Definitions, creates 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.

New §56.2, concerning Refusal to Issue or Renew Permit or License, identifies 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 new rules 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 Governmental 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 include and use a Lacey Act conviction or civil penalty as the basis for denial of a license or permit subject to the provisions of the rule.

The new rule also allows 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 new rule sets 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 new rule provides 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 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 permitee 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, subsection (b) provides 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.

Subsection (c) provides 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.

Subsection (d) establishes 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 subsection establishes 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.

New §56.3, concerning Subpermittees, Volunteers, Agents, and Surrogates, addresses 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 permitee or licensee. The 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.

New §56.4, concerning Review of Agency Decision to Deny Issuance or Renewal of License or Permit, creates a review process for department decisions concerning the issuance and renewal of licenses and permits. The 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 allows the department to reverse such decisions upon further review.

New §56.5, concerning Revocation or Suspension of License or Permit, prescribes the informal, internal process and criteria used by the department to revoke or suspend an affected permit or license. The new section utilizes the same criteria enumerated in 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 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.

New §56.6, concerning Review of Agency Decision to Seek Revocation or Suspension of a License or Permit, creates a review process for department decisions concerning revocation or suspension of affected licenses or permits. The 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 new rule is substantively identical to new §56.4, concerning Review of Agency Decision to Deny Issuance or Renewal of License or Permit. The department notes that the 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.

New §56.7, concerning Permits and Licenses Affected, lists the specific licenses and permits identified by the Sunset Advisory Commission to which the new rules apply.

The department received no public comment opposing or supporting adoption of the rules as proposed.

The new rules are adopted 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 administer 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.

§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 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 (relating to Permits and Licenses Affected) 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 Dealer - all;

(4) Bait Shrimp Dealer;

(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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204304
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 21, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 389-4775

♦ ♦ ♦

CHAPTER 57. FISHERIES
SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.111, §57.114

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022 adopted amendments to 31 TAC §57.111, concerning Definitions, and §57.114, concerning Controlled Exotic Species Permits, without changes to the proposed text as published in July 8, 2022, issue of the *Texas Register* (47 TexReg 3927). The rules will not be republished.

The amendments will function in concert to remove ambiguity concerning the circumstances under which the department issues permits authorizing the possession of controlled exotic species for zoological display purposes. The purpose of the rules in this subchapter is to minimize to the greatest extent possible the documented and unquestioned risk posed to indigenous species and ecosystems by exotic fish, shellfish, and aquatic plants. The department considers this threat to encompass not only the direct threat posed by possession of such species and their accidental or intentional release, but the indirect threat posed by lack of public awareness of their dangers, including perceptions that exotic species are somehow benign, unimportant, or not worth worrying about. To this end, the department maintains a robust, continuous public relations effort to educate and equip the public with information about the dangers posed by exotic species.

Current rule allows for the issuance of an exotic species permit for purposes of educational display, under which the sale or intentional propagation of controlled exotic species is prohibited. As noted earlier in this discussion, the department believes that educating the public about the threat of exotic species is important and, therefore, that there is value and public benefit in the issuance of controlled exotic species permits for that purpose; however, the department also considers that the most appropriate and effective vehicles for such educational efforts are entities established and operated for the purpose of educating the public about natural history, ecology, and the sciences (museums, aquaria, nature centers, and so forth). The department is concerned that the display of controlled exotic species in commercial and retail environments where animals and/or aquatic plants are sold to the public is problematic because it could result in public perception that the controlled exotic species on display in such environments, even if the specimens are not for sale, are appropriate, desirable, or lawful for hobbyists to obtain, which in turn could drive market demand for exotic species and pose additional threats to native species and ecosystems, as one of the main components of the spread of exotic species is their intentional or accidental release to the wild for various reasons. Therefore, the amendments will function to restrict the issuance of controlled exotic species permits for zoological display only to facilities that the department determines are engaged in bona fide educational activities and do not engage in the sale of fish, shellfish, wildlife, or aquatic plants.

The amendment to §57.111, concerning Definitions, defines "zoological facility" as "A zoo, aquarium, nature center, or other, similar facility that is open to the public, operated for the purpose of furthering scientific understanding, encouraging management and conservation, or furthering awareness and understanding of biology, and does not engage in commercial or retail activities involving the sale of animals or aquatic plants."

The amendment to §57.114, concerning Controlled Exotic Species Permits, provides for the issuance of permits authorizing the possession of controlled exotic species for purposes of educational display at a zoological facility that the department has determined exists for the bona fide purpose of educating the public and not for any ancillary or additional commercial purpose that involves the sale of animals or aquatic plants.

The department received no comments opposing adoption of the rules as proposed.

The department received two comments supporting adoption of the rules as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, §66.007 and §66.0072, which authorize the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish, shellfish, and aquatic plants.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204308

James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 21, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §57.127

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022 adopted 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) without changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4276). The rule will not be republished.

The amendment adopts 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 amendment also retitles the section to reflect the fact that TDA is no longer involved in aquaculture facility licensure.

The 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 amendment adopts 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.

The department received no comments opposing adoption of the rule as proposed.

The department received one comment supporting adoption of the rule as proposed.

The rule is adopted 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204309
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 21, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 389-4775

♦ ♦ ♦

CHAPTER 65. WILDLIFE
SUBCHAPTER I. DEPREDATION PERMITS

31 TAC §65.221

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022, adopted an amendment to 31 TAC §65.221, concerning General Provisions, without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3943). The rule will not be republished.

The amendment removes a reference to the cormorant control permit. In another rule action published elsewhere in this issue of the *Texas Register,* the department adopts the repeal of 31 TAC §65.901, concerning Cormorant Control Permit, which the department no longer has the authority to issue. Therefore, references to that permit are being removed from various sections of department rules.

The department received no comments opposing adoption of the proposed amendment.

The department received eight comments supporting adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter H, which authorizes the commission to adopt rules to implement that subchapter, and Chapter 67, which authorizes the commission to establish any limits 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204415
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 24, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 389-4775

♦ ♦ ♦

SUBCHAPTER W. SPECIAL PERMITS

31 TAC §65.901

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022, adopted the repeal of 31 TAC §65.901, concerning Cormorant Control Permit, without

changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3944). This rule will not be republished.

The double-crested cormorant *(Phalacrocorax auritus)* is a long-lived, colonial-nesting waterbird native to North America, and is the most abundant of six species of cormorants occurring in North America. They are opportunistic and generalist feeders, preying on many species of fish, but concentrating on those that are easiest to catch. In many areas, the double-crested cormorant is regarded as a nuisance species. The double-crested cormorant is a protected species under the Migratory Bird Treaty Act of 1918, and federal approval is required to take or possess them. The U.S. Fish and Wildlife Service (Service) in 1998 allowed U.S. Department of Agriculture Wildlife Services to conduct winter roost control on double-crested cormorants and later established a public resource depredation order to allow state wildlife agencies (including Texas), Tribes, and U.S. Department of Agriculture's Wildlife Services to conduct control activities for the protection of public resources. Under the order, the department was allowed to authorize agents to conduct lethal control activities. The current rule created a mechanism to protect public fisheries resources from depredation by allowing persons acting as agents of the department to control double-crested cormorants by permit on specific tracts of land. The Service in response to a court order in 2016 vacated federal regulations relating to control of depredating double-crested cormorants, at which point the department ceased issuing the state's cormorant control permit. Staff has determined that if the Service at some point authorizes the resumption of control activities, it will be in a form and manner that will be incompatible with current rule; therefore, the current rule can and should be repealed.

The department received no comments opposing adoption of the proposed repeal.

The department received eight comments supporting adoption of the proposed repeal.

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204413
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 24, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 389-4775

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER C. ADMINISTRATION

34 TAC §1.200

The Comptroller of Public Accounts adopts new §1.200, concerning state employee family leave pool, without changes to the proposed text as published in the September 23, 2022, issue of the *Texas Register* (47 TexReg 6157). The rule will not be republished. The new section will be located in Chapter 1, new Subchapter C, Administration.

The new section implements House Bill 2063, 87th Legislature, R.S., 2021, which enacted Government Code, §§661.021 - 661.028 (State Employee Family Leave Pool).

Section 1.200 creates a process for the Comptroller's State Employee Family Leave Pool. Subsection (a) outlines the establishment and purpose, which is to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic. Subsection (b) outlines guidelines for the program, provides for designation of a pool administrator, describes the responsibilities of the pool administrator, and provides that the operation of the family leave pool shall be consistent with Government Code, Chapter 661, Subchapter A-1.

The comptroller did not receive any comments regarding adoption of the amendment.

This new section is adopted under Government Code, §661.022(c), which requires the governing body of each state agency to adopt rules and prescribe procedures relating to the operation of the state employee family leave pool.

The new section implements Government Code, §§661.021 - 661.028 (State Employee Family Leave Pool).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204306
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Effective date: November 21, 2022
Proposal publication date: September 23, 2022
For further information, please call: (512) 475-2220

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 4. RIGHTS AND PROTECTION OF INDIVIDUALS RECEIVING INTELLECTUAL DISABILITY SERVICES

SUBCHAPTER P. RESEARCH IN STATE FACILITIES

40 TAC §§4.751 - 4.765

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 Title 40, Part 1, Chapter 4, Subchapter P, consisting of §4.751, concerning Purpose; §4.752, concerning Application; §4.753, concerning Definitions; §4.754, concerning General Principles; §4.755, concerning Designated Institutional Review Board (IRB); §4.756, concerning IRB Functions and Operations; §4.757, concerning Review and Approval of Proposed Research; §4.758, concerning Informed Consent; §4.759, concerning Research Involving Offenders as Human Subjects; §4.760, concerning Using and Disclosing Protected Health Information (PHI) in Research; §4.761, concerning Investigation of Allegations of Misconduct in Science; §4.762, concerning Responsibilities of the Office of Research Administration (ORA), §4.763, concerning Exhibits; §4.764, concerning References; and §4.765, concerning Distribution.

Sections 4.751, 4.752, 4.753, 4.754, 4.755, 4.756, 4.757, 4.758, 4.759, 4.760, 4.761, 4.762, 4.763, 4.764, and 4.765 are adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3956). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to reflect the transition of programs from DADS to HHSC. The adoption of new rules addressing research in state hospitals, state supported living centers, and by community service providers is simultaneously published elsewhere in this issue of the *Texas Register.* The new rules reflect the transition of programs to HHSC and current research protocols which align with applicable federal laws.

COMMENTS

The 31-day comment period ended August 8, 2022.

During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code Chapter 531, Health and Human Services Commission, Section 531.0055, Executive Commissioner: General Responsibility for Health and Human Services System, 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 adopt rules to implement the executive commissioner's authority under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204441
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: November 27, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 438-3049

♦ ♦ ♦

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.2

The Texas Veterans Land Board (VLB) adopts the amendments to 40 Texas Administrative Code (TAC) §175.2, relating to the definition of an eligible Texas Veteran with no changes to the text of the rule. The Veterans Land Board adopts the proposed amendment that will add the United States Space Force (USSF) as an eligible branch of service. The rule amendment was published in the September 23, 2022 issue of the *Texas Register* (47 TexReg 6188) and will not be republished.

BACKGROUND AND JUSTIFICATION

The National Defense Authorization Act of 2020 amended 10 U.S.C. effective December 20, 2019, establishing the United States Space Force (USSF) as the newest branch of the United States Armed Forces. Current and discharged members of the USSF or USSF Reserves, may be eligible for VA home loan benefits upon meeting length-of-service (LOS), and character-of-service (COS) requirements. Qualifying Surviving Spouses of Veterans who served in the USSF may also be eligible for the VA home loan benefit. On June 23, 2022, the Veterans Administration issued a Certificate of Eligibility (COE) Update (Circular 26-22-10) announcing a COE enhancement to include the USSF as a branch of service.

PUBLIC COMMENT REQUEST

The VLB did not receive any comments during the 30-day comment period.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §161.001(b), that provides that the Board may by rule

change the definition of "veteran" as necessary or appropriate to protect the best interests of the 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.

Filed with the Office of the Secretary of State on November 1, 2022.

TRD-202204312
Mark Havens
Chief Clerk, Deputy Land Commissioner
Texas Veterans Land Board
Effective date: November 21, 2022
Proposal publication date: September 23, 2022
For further information, please call: (512) 475-1859

♦ ♦ ♦

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSURE OF PERSONS WITH CRIMINAL CONVICTIONS

40 TAC §374.3

The Texas Board of Occupational Therapy Examiners adopts amendments to the 40 Texas Administrative Code §374.3, Complaint Process. The amendments are adopted to remove certified mail and notarized signatures requirements with regard to agreed orders. The changes will allow orders and notices to be sent by all the methods listed in Texas Government Code section 2001.054(c), and will not limit delivery to certified mail, return receipt requested. The amendments are adopted without changes to the proposed text as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5452) and will not be republished.

Changes to the section include the removal of requirements concerning the Board's use of certified mail when sending agreed orders to the respondent to a complaint. The amendments will also remove the requirement that respondents have their signatures notarized on agreed orders.

These changes will streamline both board processes regarding mailing and requirements for respondents concerning agreed orders. The Board anticipates that these changes will increase the efficiency of investigative mailing processes and reduce the possible complications respondents to a complaint may encounter when responding to agreed orders.

The amendments also include a revision to correct a reference in the section to Texas Government Code section 2001.054(c). The change is adopted to increase the accuracy of the board rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454, and under §454.153, which requires the Board to adopt rules relating to the investigation of a complaint received by the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202204363
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: December 1, 2022
Proposal publication date: September 9, 2022
For further information, please call: (512) 305-6900

♦ ♦ ♦

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) adopts amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §§800.52, 800.71, 800.78, and 800.80

The amendments are adopted *without changes* to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4282), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted amendments to Chapter 800 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 adopts 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 deleted and the reference is updated to §800.80(a), which contains similar language to the language that was deleted.

Section 800.78(a)(1) is amended to revise 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 deoglibated 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) is also amended to add that the Commission may make those funds available 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) is also 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.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on August 22, 2022. No comments were received.

PART IV.

STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement the requirements set out in Workforce Innovation and Opportunity Act Title II and Texas Labor Code, Chapter 315.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204388
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: November 24, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 689-9855

♦ ♦ ♦

SUBCHAPTER M. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING FINANCIAL ASSISTANCE

40 TAC §§800.550 - 800.557

The Texas Workforce Commission (TWC) adopts the following new subchapter to Chapter 800, relating to General Administration:

Subchapter M. Tax Refund for Wages Paid to Employee Receiving Financial Assistance, §§800.550 - 800.557

The new sections are adopted *without changes* to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5083), and, therefore, the adopted rule text will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of new Chapter 800, Subchapter M is to establish administrative rules to clarify the requirements and eligibility determination applicable under Texas Labor Code, Chapter 301, Subchapter H, relating to Tax Refund for Wages Paid to Employee Receiving Financial Assistance.

Senate Bill (SB) 82, enacted by the 73rd Texas Legislature, Regular Session (1993), amended Texas Human Resources Code, Chapter 31 by adding Subchapter D, Tax Refund for Wages Paid to Employee Receiving Financial Assistance (Tax Refund Program). The Tax Refund Program required the Texas Department of Human Services (DHS) to provide tax vouchers to persons upon application and certification of eligibility.

In 1997, the 75th Texas Legislature enacted SB 1113, which transferred the Tax Refund Program from the Texas Human Resources Code, Chapter 31, Subchapter D to Texas Labor Code, Chapter 301, Subchapter H, effectively moving the application eligibility and certification procedures from DHS to TWC. SB 1113 also implemented new rulemaking authority, allowing TWC to "adopt rules as necessary to carry out its powers and duties under this subchapter" and required DHS to provide information to TWC that is required to determine eligibility for persons applying for the Tax Refund.

The Comptroller of Public Accounts' rule under 34 Texas Administrative Code (TAC) §3.4, implemented in 1995, was not amended when the program transitioned from DHS to TWC. TWC did not establish rule to operate the Tax Refund Program. The application and eligibility certification procedures related to the Tax Refund Program have been operated by TWC staff since 1997 through publicly available information and a tax refund application form, currently maintained on TWC's Work Opportunity Tax Credit Program Overview webpage.

The Comptroller's office is reviewing possible amendments to 34 TAC §3.4 that would eliminate reference to eligibility determinations in its rule. TWC determined that the establishment of an administrative rule to clarify the requirements and eligibility determination applicable under Texas Labor Code, §301.107 is now needed.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER M. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING FINANCIAL ASSISTANCE

TWC adopts new Subchapter M, as follows:

§800.550. Purpose

New §800.550 states the purpose and goal for Chapter 800, Subchapter M.

§800.551. Definitions

New §800.551 defines terms used in Chapter 800, Subchapter M.

§800.552. Tax Refund Voucher

New §800.552(a) states that TWC shall issue tax refund vouchers in the amounts allowed by and subject to restrictions in Chapter 800, Subchapter M. New §800.552(b) states that a person issued a tax refund voucher may apply for the tax refund.

§800.553. Amount of Refund: Limitation

New §800.553(a) states the maximum amount of the potential tax refund allowed per employee that is certified under new §800.554 and §800.555. New §800.553(b) states that the refund amount cannot exceed the amount of net tax paid by the person to the State of Texas after any other applicable tax credits for the calendar year.

§800.554. Eligibility

New §800.554 describes the eligibility required for the tax refund. New §800.554(1) describes the eligibility requirements regarding wages incurred by a person for service of an employee. New §800.554(2) refers to the certification requirements in new §800.555, and new §800.554(3) describes the options for a person to provide and pay a part of the cost for health care coverage.

§800.555. Certification

New §800.555 describes the time parameters for an employee to be receiving financial or medical assistance prior to employment.

§800.556. Application for Refund: Issuance

New §800.556 identifies the time period, on or after January 1 and before April 1, for persons to submit applications for the previous calendar year. New §800.556(b) gives TWC the authority to promulgate the application for the tax refund voucher. New §800.556(c) limits the use of the tax refund voucher to the year for which the voucher is issued.

§800.557. Limitations.

New §800.557(a) reinforces the requirement of health care coverage for the employee under new §800.554(3). New §800.557(b) identifies rules of conveyance, assignment, or transfer of a refund under Chapter 800, Subchapter M.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on September 26, 2022. No comments were received.

PART IV.

STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.107(a), which stipulates that TWC shall adopt rules as necessary to carry out its powers and duties under Chapter 301, Subchapter H.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapter 301.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204387
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: November 24, 2022
Proposal publication date: August 26, 2022
For further information, please call: (512) 689-9855

♦ ♦ ♦

CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (TWC) adopts 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

The amendment to §805.2 is adopted *with changes* to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4285), and, therefore, the adopted rule text will be published. The amendments to §§805.4, 805.21, 805.41, and 805.43 are adopted *without changes* to the proposed text as published and, therefore, the adopted rule text will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted amendments to Chapter 805 is to add and clarify Adult Education and Literacy (AEL) terms and definitions, clarify professional development requirements and activities that must be provided by AEL programs, and 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 adopted 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 readoption, revision, or repeal each rule adopted by that agency. TWC reviewed the rules in Chapter 805 and determined that the rules are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist, and any changes to the rules are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts 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." At adoption, the Commission corrected the WIOA reference from WIOA §203(4) to WIOA §203(5) and also revised the reference to the United States Code for consistency.

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.

At adoption, the Commission corrected the WIOA reference under renumbered §805.2(19) from WIOA §2 to WIOA §3(59).

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 adopts 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 adopts 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 adopted amendment removes the word "staggered" from the two-year term requirement.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on August 22, 2022. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §805.2, §805.4

PART IV. STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted 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 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(5)/29 United States Code §3272(5) 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 (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) 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) 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) of this paragraph; and

(J) a partnership between an employer and an entity described in any of subparagraphs (A) - (I) of this paragraph.

(13) 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) 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) 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) 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 to accomplish a predetermined educational or learning outcome that is tracked in the statewide AEL data management information system.

(17) Program year--The AEL program year is July 1 through June 30.

(18) 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) 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 §3(59).

(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) 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) 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) 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204390
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: November 24, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 689-9855

♦ ♦ ♦

SUBCHAPTER B. STAFF QUALIFICATIONS

40 TAC §805.21

The rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204391
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: November 24, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 689-9855

♦ ♦ ♦

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

40 TAC §805.41, §801.43

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2022.

TRD-202204393
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: November 24, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 689-9855

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (Department) adopts the review of Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter D, Miscellaneous Provisions, comprised of §1.81 and §1.91. The review was conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

Notice of intent to review the rules was published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5343). No comments were received on the proposed rule review.

The Department finds that the reasons for initially adopting the rules in Chapter 1, Subchapter D continue to exist, and readopts the rules with amendments and proposes new rules to reflect current statutory requirements, current procedures, provide clarity, and update references to legal authority. As a result, the department proposes amendments to §§1.81 and 1.91 and proposes new §§1.82 and 1.83, which can be found in the Proposed Rules section of this issue.

TRD-202204335
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: November 2, 2022

♦ ♦ ♦

The Texas Department of Agriculture (the Department) adopts the review of Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter G, Interagency Agreements, comprised of §§1.310 - 1.320. The review was conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

Notice of intent to review the rules was published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5503). No comments were received from the public during the proposed rule review.

The Department finds that the reasons for initially adopting the rules in Chapter 1, Subchapter G continue to exist and readopts the rules without changes.

TRD-202204492
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: November 8, 2022

♦ ♦ ♦

The Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter R, Children's Access to Nutritious Food Grant Program, pursuant to Texas Government Code, §2001.039 (Agency Review of Existing Rules). The Department considered whether the reasons for the adoption of the rules in this subchapter continue to exist. Notice of the rule review was published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5343). No comments were received as a result of that notice.

Before publishing notice of this rule review, the Department received one informal comment from a stakeholder. The stakeholder commented that they believed the Children's Access to Nutritious Food Grant Program was never funded and they were unsure why the rules for the program were promulgated.

The Department considered the informal comment it received as part of the rule review and determined it was consistent with the Department's findings during the rule review that funds were not appropriated for the program.

The Department finds that the reasons for initially adopting the rules in this subchapter no longer exist and proposes the repeal of these rules. The proposed repeal can be found in the Proposed Rules section of this issue.

TRD-202204383
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: November 4, 2022

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the April 1, 2022, issue of the *Texas Register* (47 TexReg 1701), the Texas Department of Agriculture (Department) has reviewed and considered for readoption, revision or repeal all sections of Texas Administrative Code, Title 4, Part 1, Chapter 23, in accordance with Texas Government Code, §2001.039 (Agency Review of Existing Rules). No comments were received as a result of the proposed rule review notice.

The Department finds that the reasons for initially adopting Chapter 23, Subchapters A and B continue to exist, and readopts the rules with nonsubstantive changes, except for §§23.24, 23.26, 23.40, 23.44, and 23.102. The Department finds the reasons for initially adopting these rules no longer exist. Further, the Department finds the reasons for initially adopting Chapter 23, Subchapter C no longer exist. As a result, the Department proposes the repeal of rules for which the reason for their initial adoption no longer exists, which can be found in the Proposed Rules section of this issue.

TRD-202204355
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: November 3, 2022

♦ ♦ ♦

The Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 26, Subchapter B, Nutrition Working Groups, pursuant to Texas Government Code, §2001.039 (Agency Review of Existing Rules). The Department considered whether the reasons for the adoption of the rule in this subchapter continues to exist.

Notice of the rule review was published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5343). No comments were received in response to that notice.

After its review, the Department finds that the reasons for the initial adoption of this subchapter no longer exist and proposes the repeal of Chapter 26, Subchapter B in its entirety. The proposed repeal can be found in the Proposed Rules section of this issue.

TRD-202204372
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: November 3, 2022

♦ ♦ ♦

The Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 29, Subchapter A, Economic Development Program, Subchapter D, Texas Rural Investment Fund Program, and Subchapter E, Rural Economic Development and Investment Program, pursuant to Texas Government Code, §2001.039 (Agency Review of Existing Rules). The Department considered whether the reasons for the adoption of the rules in these subchapters continue to exist. Notice of the rule review was published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5867). No comments were received as a result of that notice.

The Department finds that the reasons for initially adopting the rules in 4 Texas Administrative Code Chapter 1, Subchapter A no longer exist and proposes the repeal of these rules. The proposed repeal can be found in the Proposed Rules section of this issue. The Department finds that the reasons for initially adopting 4 Texas Administrative Code Chapter 1, Subchapters D and E, continue to exist and readopts the rules with no changes.

TRD-202204336
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: November 2, 2022

♦ ♦ ♦

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter H (relating to Investments), of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.801, 91.802, 91.803, 91.804, 91.805, 91.808, and 91.809.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter H, was published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6471). The Department received no comments on the notice of intention to review.

The Department hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to readopt.

TRD-202204493
Michael S. Riepen
Commissioner
Credit Union Department
Filed: November 8, 2022

♦ ♦ ♦

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter I (relating to Reserves and Dividends), of the Texas Administrative Code, Title 7, Part 6, consisting §91.901 and §91.902.

The rules were reviewed as a result of the Department's general rule review under Texas Government Code Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter I, was published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6471) as required. The Department received no comments on the notice of intention to review.

The Department hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to readopt.

TRD-202204494
Michael S. Riepen
Commissioner
Credit Union Department
Filed: November 8, 2022

♦ ♦ ♦

Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board (Board) has concluded the statutory review of Texas Administrative Code Chapter 277 - Practice and Procedure conducted in accordance with Government Code §200.039. The Board's intent to review Chapter 277 was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board's review assessed and determined that the original reasons and justifications for adopting each rule in Chapter 277 continue to exist, reflect current legal and policy considerations, and the rules are within the agency's legal authority as certified by legal counsel.

Based on its review, the Board readopts §77.1 and §77.2 with substantive amendments, readopts §§7.3, 277.4, 277.5, 277.6, 277.10, 277.11, and 277.12 with non-substantive amendments, and readopts §§7.7, 277.8, 277.9, 277.13, and 277.14 with no amendments. The proposed amendments can be found in the Proposed Rules section of this issue.

TRD-202204416
Janice McCoy
Executive Director
Texas Optometry Board
Filed: November 4, 2022

♦ ♦ ♦

The Texas Optometry Board (Board) has concluded the statutory review of Chapter 279 - Interpretations conducted in accordance with Government Code §200.039. The Board's intent to review Chapter 279 was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board's review assessed and determined that the original reasons and justifications for adopting the majority of the rules in Chapter 279 continue to exist, reflect current legal and policy considerations, and the rules are within the agency's legal authority as certified by legal counsel.

Based on its review, the Board readopts 279.1, 279.2, 279.3, 279.4, 279.13, and 279.15 with substantive amendments, readopts 279.11 and 279.12 with non-substantive amendments, and readopts 279.5, 279.9, 279.10, 279.14, and 279.16 with no amendments. The proposed amendments can be found in the Proposed Rules section of this issue.

TRD-202204452
Janice McCoy
Executive Director
Texas Optometry Board
Filed: November 7, 2022

EXIT

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §75.6(c)

MANDATORY NOTICE TO THE PUBLIC

ANY COMPLAINTS AGAINST

A LICENSEE SHOULD BE MADE TO:

The Texas Board of Chiropractic Examiners

1801 Congress Avenue

Suite 10.500

Austin, Texas 78701-1319

http://www.tbce.texas.gov/

512-305-6700

or 1-800-821-3205

ATTENTION: This placard shall be visible to the public and conspicuously displayed in any location where chiropractic services are provided.

AVISO OBLIGATORIO AL PUBLICO

CUALQUIER QUEJA CONTRA

UN QUIROPRACTICO DEBE HACERSE:

The Texas Board of Chiropractic Examiners

1801 Congress Avenue

Suite 10.500

Austin, Texas 78701-1319

http://www.tbce.texas.gov/

512-305-6700

or 1-800-821-3205

ATENCION: Este signo será visible al public y se mostrará visiblemente en cualquier lugar donde se provean servicios quiropracticos.

Figure: 26 TAC §745.435(a)

Operation Type or Types	Notify Licensing No Later Than
(1) Licensed Child-Care Home.	15 days prior to the move.
(2) School-Age Program, Before or After-School Program, Child-Care Center, General Residential Operation, Child-Placing Agency.	30 days prior to the move.

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. (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, 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. (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	(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.

reasonable effort to prevent an action by another person that results in substantial physical injury to the child.			
(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.	(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.
(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.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES. (B)(ii) As soon as you become aware of it.	(C)(i) NO. (C)(ii) Not applicable.

(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.	(A)(i) NO. (A)(ii) Not applicable.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(C)(i) NO. (C)(ii) Not applicable.
(8) The unauthorized absence of a child who is developmentally or chronologically under 6 years old.	(A)(i) YES. (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES. (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES. (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.
(9) The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.	(A)(i) YES. (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES. (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES. (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(10) The unauthorized absence of a child who is 13 years old or older.	(A)(i) YES. (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	(B)(i) YES. (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	(C)(i) YES. (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 foster home.	victim, or you believe the child has been abducted or has no intention of returning to the foster home.	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.
(3) You must temporarily do the following to comply with a declared state of disaster under Chapter 418, Government Code: • Move your operation to a new location that is not noted on your permit; • Move a foster home to a new location that is not noted on the verification; • 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).	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after: • Your operation temporarily moves to a new location that is not noted on your permit; • A foster home temporarily moves to a new location that is not noted on the verification; or • A foster home temporarily provides care to any child at a location not noted on the verification.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after: • Your operation temporarily moves to a new location that is not noted on your permit; • A foster home temporarily moves to a new location that is not noted on the verification; or • A foster home temporarily provides care to any child at a location not noted on the verification.

(4) 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) 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) 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.
(7) 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?): • An arrest; • An indictment;	(A)(i) YES. (A)(ii) As soon as you become aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.

• Information regarding an official compliant accepted by a county or district attorney; or • An arrest warrant executed by law enforcement.		
(8) A search warrant is executed by law enforcement at the operation or a foster home.	(A)(i) YES. (A)(ii) As soon as you become aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.
(9) An allegation that an employee or caregiver: • 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?); • Used a prohibited personal restraint technique, as outlined in §749.2205 of this chapter (relating to What personal restraint techniques are prohibited?); or • Used an Emergency Behavior Intervention inappropriately, as outlined in §749.2063 of this chapter (relating to Are there any purposes for which emergency behavior intervention cannot be used?) or §749.2281 of this chapter (relating to What is the maximum length of time that an emergency behavior intervention can be	(A)(i) YES. (A)(ii) As soon as possible but no later than 24 hours after you become aware of the incident.	(B)(i) YES. (B)(ii) As soon as possible but no later than 24 hours after you become aware of the incident.

administered to a child?).		

Figure: 26 TAC §749.2551(a)

If the home cares for:	*Then the maximum number of children the home may care for is:*
Infants	Six, with 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.
One child or more receiving treatment services for primary medical needs	• Six, with a maximum of three children with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children; or • Four, if all placements are children with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children. • Foster family homes verified to provide treatment services to children with primary medical needs before January 1, 2015, may continue to care for up to six children with no limitation.

Figure: 26 TAC §749.2551(c)

If the home cares for:	*Then the maximum number of children the home may care for is:*
Any child less than five years old	Five
Infants	Five, with 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.
Three or more children receiving treatment services	Four
One child or more receiving treatment services for primary medical needs	• Four, with a maximum of one child with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children; or • Two, if all placements are children with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children. • Foster family homes verified to provide treatment services to children with primary medical needs before January 1, 2015, may continue to care for up to four children with no limitation.

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 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 11/14/22 - 11/20/22 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/14/22 - 11/20/22 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202204506
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 8, 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 **December 21, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **December 21, 2022**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Bush, James A Jr.; DOCKET NUMBER: 2022-1185-OSS-E; IDENTIFIER: RN104404165; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: City of Austin; DOCKET NUMBER: 2022-0803-EAQ-E; IDENTIFIER: RN111452975; LOCATION: Austin, Williamson County; TYPE OF FACILITY: fire station fueling; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: City of La Marque; DOCKET NUMBER: 2022-1434-WQ-E; IDENTIFIER: RN101917284; LOCATION: La Marque, Galveston County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Fortune and Son Enterprises LLC; DOCKET NUMBER: 2022-1272-WQ-E; IDENTIFIER: RN111547295; LOCATION: Abilene, Taylor 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: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Hester, Jessica Rae; DOCKET NUMBER: 2022-1359-WOC-E; IDENTIFIER: RN110736568; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: J Garwood Enterprises LLC; DOCKET NUMBER: 2022-1364-WQ-E; IDENTIFIER: RN111552121; LOCATION: Tyler, Smith 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: Katelyn Tubbs, (512) 236-2512; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Matrix Demolition LLC; DOCKET NUMBER: 2022-1183-WQ-E; IDENTIFIER: RN111516977; LOCATION: Cresson, Johnson 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: Steven Van Landingham, (512) 236-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Peters, Danny Ray; DOCKET NUMBER: 2022-1184-OSI-E; IDENTIFIER: RN103687513; LOCATION: Kirbyville, Jasper County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: RIVER INN ASSOCIATION OF UNIT OWNERS, INCORPORATED; DOCKET NUMBER: 2020-1519-MWD-E; IDENTIFIER: RN102335692; LOCATION: Hunt, Kerr County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; and 30 TAC §317.3(e)(5), by failing to provide an audiovisual alarm for all lift stations; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Schrader Construction Company, Incorporated; DOCKET NUMBER: 2022-1126-WQ-E; IDENTIFIER: RN108565524; LOCATION: Bellville, Austin County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Wilson Built Homes LLC; DOCKET NUMBER: 2022-1286-WQ-E; IDENTIFIER: RN111547246; LOCATION: Abilene, Taylor 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: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202204453
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 8, 2022

♦ ♦ ♦

Correction of Error

The Texas Commission on Environmental Quality (commission) proposed amendments to 30 TAC §293.59 in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7396).

Due to an error as submitted by the commission, the preamble incorrectly lists the close of comment period as November 8, 2022. The correction should read that the close of comment period is December 7, 2022. All comments should reference Rule Project Number 2022-017-292-OW. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system.

TRD-202204510

♦ ♦ ♦

Extension of Nomination Period for Appointment to Serve on the Irrigator Advisory Council

In the October 7, 2022, issue of the *Texas Register* (47 TexReg 6662), the Texas Commission on Environmental Quality (TCEQ or commission) published notice requesting nominations for four individuals to serve on the Irrigator Advisory Council (council). **The commission has extended the deadline for receipt of written nominations and letters to 5:00 p.m. on November 21, 2022.**

The appointments will be considered by the TCEQ at a future Commission agenda meeting. Please mail all correspondence to Dr. Michael Wei, Texas Commission on Environmental Quality, Program Support Section, MC-235, P.O. Box 13087, Austin, Texas 78711-3087 or fax to (512) 239-2249. Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. Questions regarding the council may be directed to Dr. Michael Wei at (512) 239-6596 or by E-mail: mingyuan.wei@tceq.texas.gov. Additional information regarding the council is available on the website: *https://www.tceq.texas.gov/drinkingwater/irrigation/irr_advisory.html.*

TRD-202204444
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 7, 2022

♦ ♦ ♦

Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 170677

APPLICATION. Champion Concrete Inc, 180 Traders Mine Road, Iron Mountain, Michigan 49801-1447 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 170677 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 4934 North Highway 181, Gregory, San Patricio County, Texas 78359. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.908611&lng=-97.295556&zoom=13&type=r. This application was submitted to the TCEQ on October 12, 2022. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 20, 2022.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, December 15, 2022, at 6:00 p.m.

Humble Station Community Center

2821 Main Street

Ingleside, Texas 78362

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Corpus Christi Regional Office, located at 500 N. Shoreline Blvd., Suite 500, Corpus Christi, Texas 78401-0318, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Champion Concrete, Inc., 180 Traders Mine Road, Iron Mountain, Michigan 49801-1447, or by calling Mr. Mark Fitzpatrick, Business Unit Manager at (906) 302-2416.

Notice Issuance Date: November 3, 2022

TRD-202204521
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2022

♦ ♦ ♦

Notice of Correction to Agreed Order Number 1

In the May 27, 2022, issue of the *Texas Register* (47 TexReg 3172), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 1, for BAZE CHEMICAL, INCORPORATED dba Base Chemical Palestine; Docket Number 2021-0984-MLM-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "$68,183."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202204454
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 8, 2022

♦ ♦ ♦

Notice of Correction to Agreed Order Number 6

In the September 16, 2022, issue of the *Texas Register* (47 TexReg 5873), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 6, for Gladstone Investments Group Incorporated; Docket Number 2021-1398-WQ-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "Gladstone Investment Group Inc."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202204455
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 8, 2022

♦ ♦ ♦

Notice of District Petition

Notice issued November 9, 2022

TCEQ Internal Control No. D-09122022-024; Cedar Creek East LP, a Texas limited partnership and NEU Community Creekside LLC, a Texas limited liability company, (the "Petitioners") filed an amended petition (petition) for creation of Bastrop County Municipal Utility District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 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 in the proposed District; (2) there are three lienholders, Stallion Texas Real Estate Fund, LLC, Stallion Texas Real Estate Fund II-REIT, LLC, and Austerra Stable Income Fund, L.P., on the property to be included in the proposed District and the aforementioned entities have consented to the petition; (3) the proposed District will contain approximately 575.264 acres located within Bastrop County, Texas; and (4) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of Bastrop (City).

The petition further states that the work proposed to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, ac-

quisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the 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 $125,685,000 (including $102,940,000 for water, wastewater, and drainage plus $13,425,000 for roads and $9,320,000 for recreational facilities). In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of their Property into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. When searching the web site, 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 web site at www.tceq.texas.gov.

TRD-202204517
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2022

♦ ♦ ♦

Notice of District Petition

Notice issued November 9, 2022

TCEQ Internal Control No. D-07212022-032; JLMCG Properties, LLC, a Nevada limited liability company, and Cendei Sherwood, (Petitioners) filed a petition for creation of Rockwood Municipal Utility District No. 1 of Denton County (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 Petitioners hold 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 359 acres located within Denton County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Ponder. The petition further states that the proposed District will: (1) construct a water distribution system for domestic purposes; (2) construct a wastewater system; (3) control, abate, and amend harmful excesses of water and the reclamation and drainage of overflowed lands within the proposed District; (4) construct and finance macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) construct, install, maintain, purchase and operate such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, the proposed District will be granted the authority to design, acquire, construct, finance, issue bonds, operate, maintain, and convey to the State of Texas, a county, or a municipality for operation and maintenance, a road, or any improvement in aid of the road. 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 $55,215,000 ($37,685,000 for water, wastewater, and drainage and $17,530,000 for roads).

The Property is located within the extraterritorial jurisdiction of the City of Ponder, Denton County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioners submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioners submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the proposed District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, 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 web site at www.tceq.texas.gov.

TRD-202204518
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2022

♦ ♦ ♦

Notice of District Petition

Notice issued November 2, 2022

TCEQ Internal Control No. D-09162022-034; HK Fredericksburg, LLC, a Texas limited liability company, and Lennar Homes of Texas Land and Constructions, Ltd., a Texas limited partnership (Petitioners) filed a petition for creation of Gillespie County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Schertz Bank & Trust and Lennar Homes of Texas Land and Construction, Ltd., on the property to be included in the proposed District and information provided indicates that the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 90.22 acres located within Gillespie County, Texas; and (4) all of the land within the proposed District is wholly within the corporate limits of the City of Fredericksburg.

Resolution No. 2022-11R, passed and adopted on June 20, 2022, the City of Fredericksburg, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $17,145,000 ($11,200,000 for water, wastewater, and drainage and $5,945,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, 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 web site at www.tceq.texas.gov.

TRD-202204519
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2022

♦ ♦ ♦

Notice of District Petition

Notice issued November 9, 2022

TCEQ Internal Control No. D-D-10062022-012; Pleasanton Farms, LLC and Lennar Homes of Texas Land and Construction, Ltd, (Petitioners) filed a petition for creation of Atascosa County Municipal Utility No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 and Article III, §52 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 no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 76.465 acres located within Atas-

cosa County, Texas; and (4) the property is located within the corporate boundaries of the City of Pleasanton in Atascosa County, Texas. By Resolution No. 228-21, passed and adopted on June 17, 2021, the City of Pleasanton, 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, 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 District and the payment of organization expenses, 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, systems, plants and enterprises as shall be consonant with the purposes for which the 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 $28,565,078 ($19,347,782 for water, wastewater, and drainage and $9,217,296 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. When searching the web site, 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 web site at www.tceq.texas.gov.

TRD-202204520
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2022

♦ ♦ ♦

Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 21, 2022**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 21, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: John Adam Solis; DOCKET NUMBER: 2020-1333-PST-E; TCEQ ID NUMBER: RN101829968; LOCATION: 141 Howard Marshall Boulevard, Littlefield, Lamb County; TYPE OF FACILITY: out-of-service underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; TWC, §26.3475(d) and 30 TAC §334.49(a)(2) and §334.54(b)(3), by failing to adequately protect a temporarily out-of-service UST system from corrosion; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class

A, B, and C; PENALTY: $11,216; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202204503
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 8, 2022

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Carol Mahan, Tanner Mahan, Holly P. Wright, and Tyler O. Wright SOAH Docket No. 582-23-04120 TCEQ Docket No. 2021-0287-WR-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 8, 2022

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 27, 2022, concerning assessing administrative penalties against and requiring certain actions of Carol Mahan, Tanner Mahan, Holly P. Wright, and Tyler O. Wright, for violations in Menard County, Texas, of: TCEQ Agreed Order Docket No. 2018-1447-WR-E, Ordering Provision No. 2.a.

The hearing will allow Carol Mahan, Tanner Mahan, Holly P. Wright, Tyler O. Wright, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Carol Mahan, Tanner Mahan, Holly P. Wright, Tyler O. Wright, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Carol Mahan, Tanner Mahan, Holly P. Wright, or Tyler O. Wright to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true as to the party or parties who did not appear, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Carol Mahan, Tanner Mahan, Holly P. Wright, Tyler O. Wright, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code ch. 11 and 30 Texas Administrative Code ch. 70; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Clayton Smith, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Garrett T. Arthur, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code § 155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 7, 2022

TRD-202204516
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2022

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalities and Requiring Certain Actions of S.M. Patel, Inc. DBA Diboll Food Mart SOAH Docket No. 582-23-04121 TCEQ Docket No. 2021-0563-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 8, 2022

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 13, 2022 concerning assessing administrative penalties against and requiring certain actions of S.M. PATEL, INC. dba Diboll Food Mart, for violations in Angelina County, Texas, of: Tex. Water Code § 26.3475(a), (c)(1), and (c)(2) and 30 Texas Administrative Code §§334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), 334.48(g)(1)(A)(ii), (g)(1)(B), and (h)(1)(A)(i), 334.50(b)(1)(A) and (b)(2) and 334.51(b)(2)(C).

The hearing will allow S.M. PATEL, INC. dba Diboll Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such

penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford S.M. PATEL, INC. dba Diboll Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of S.M. PATEL, INC. dba Diboll Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** S.M. PATEL, INC. dba Diboll Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and Tex. Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jennifer Peltier, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Garrett T. Arthur, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code § 155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 7, 2022

TRD-202204515
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2022

♦ ♦ ♦

Notice of Request for Public Comment and Notice of a Public Meeting on Draft Implementation Plan for Two Total Maximum Daily Loads for Indicator Bacteria in the Sandy Creek and Wolf Creek Watershed

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment the draft Implementation Plan (I-Plan) for two Total Maximum Daily Loads (TMDLs) for indicator bacteria in Sandy Creek and Wolf Creek, of the Neches River Basin, in Jasper and Tyler counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft I-Plan in two assessment units: Sandy Creek 0603A_01 and Wolf Creek 0603B_01.

The I-Plan describes the strategy and activities that TCEQ and watershed partners will carry out to improve water quality in the affected watershed. The Water Quality Planning Division respectfully requests Commission approval to propose the I-Plan for a formal public review and comment period. After the public comment period, staff may make appropriate changes to the proposed I-Plan and will respond to public comments. Following the public comment period, the TMDL Program will request that the Commission consider approval of the final I-Plan. The I-Plan, combined with the TMDL, provides local, regional, and state organizations with a comprehensive strategy for improving and maintaining water quality in an impaired watershed.

After the public comment period, TCEQ may revise the draft I-Plan if appropriate. The final I-Plan will then be considered by the Commission for approval. Upon approval of the I-Plan by the Commission, the final I-Plan and a response to all comments received will be made available on TCEQ's website.

Public Meeting and Testimony. The public meeting for the draft I-Plan will be held at the Jasper County Courthouse Annex, 271 E. Lamar St. Jasper, Texas 75951 on **December 6, 2022, at 6:00 p.m.**

Please periodically check *https://www.tceq.texas.gov/waterquality/tmdl/nav/118-sandy-wolf-creeks-bacteria* before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft I-Plan may be submitted to Nicole Reed, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All written comments must be received at TCEQ by midnight on December 21, 2022, and should reference Implementation Plan for Two Total Maximum Daily Loads for Indicator Bacteria in Sandy Creek and Wolf Creek.

For further information regarding the draft I-Plan, please contact Nicole Reed at *Nicole.Reed@tceq.texas.gov.* The draft I-Plan can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/118-sandy-wolf-creeks-bacteria.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Nicole Reed at *Nicole.Reed@tceq.texas.gov.* Requests should be made as far in advance as possible.

TRD-202204389
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 4, 2022

♦ ♦ ♦

Notice of Request for Public Comment and Notice of Public Meetings for I-Plan for Two TMDLs for Indicator Bacteria in the Caney Creek Watershed

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment the draft Implementation Plan (I-Plan) for two Total Maximum Daily Loads (TMDLs) for indicator bacteria in the Caney Creek watershed, of the Brazos-Colorado Coastal Basin, within Brazoria, Matagorda, and Wharton counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft I-Plan in two assessment units: Caney Creek Tidal 1304_01 and Linnville Bayou 1304A_01.

The I-Plan describes the strategy and activities that TCEQ and watershed partners will carry out to improve water quality in the affected watershed. The Water Quality Planning Division respectfully requests Commission approval to propose the I-Plan for a formal public review and comment period. After the public comment period, staff may make appropriate changes to the proposed I-Plan and will respond to public comments. Following the public comment period, the TMDL Program will request that the Commission consider approval of the final I-Plan. The I-Plan, combined with the TMDL, provides local, regional, and state organizations with a comprehensive strategy for improving and maintaining water quality in an impaired watershed.

After the public comment period, TCEQ may revise the draft I-Plan if appropriate. The final I-Plan will then be considered by the Commission for approval. Upon approval of the I-Plan by the Commission, the final I-Plan and a response to all comments received will be made available on TCEQ's website.

Public Meeting and Testimony. The public meeting for the draft I-Plan will be held at the **Caney Creek Municipal Utility District, 405 County Road 298, Sargent, Texas 77414** (1/4 mile down CR 298 southwest of its intersection with Highway 457 in Sargent) **on December 8, 2022, at 6:00 p.m.**

Please periodically check *https://www.tceq.texas.gov/waterquality/tmdl/nav/115-caneycreek-bacteria* before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft I-Plan may be submitted to Jason Leifester, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All written comments must be received at TCEQ by midnight on December 21, 2022, and should reference Implementation Plan for Two Total Maximum Daily Loads for Indicator Bacteria in the Caney Creek Watershed.

For further information regarding the draft I-Plan, please contact Jason Leifester at *Jason.Leifester@tceq.texas.gov.* The draft I-Plan can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/115-caneycreek-bacteria.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Jason Leifester at *Jason.Leifester@tceq.texas.gov.* Requests should be made as far in advance as possible.

TRD-202204392
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 4, 2022

♦ ♦ ♦

Notice of Water Rights Application

Notice Issued November 08, 2022

APPLICATION NO. 12-2942A; Wright Double J Ranch Inc., 8591 Witter Lane, Temple, Texas, 76502, Applicant, seeks to amend its portion of Certificate of Adjudication No. 12-2942 to add wildlife management as a purpose of use, add an off-channel reservoir complex for storage and subsequent diversion and use, and add a place of use for agricultural purposes in the Brazos River Basin, Bell 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 February 2, 2021. Additional information and fees were received on March 23, 2021. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 20, 2021.

The Executive Director 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 a measurement device. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps.

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by November 28, 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 November 28, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by November 28, 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 2942 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 web site 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-202204514
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 9, 2022

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-3-20746

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts - Enforcement (CPA-E) announces the issuance of Request for Proposals (RFP) 303-3-20746. TFC seeks a five (5) or ten (10) year lease of approximately 3,257 square feet of usable office space within the city limits of Tyler, Texas.

The deadline for questions is November 30, 2022, and the deadline for proposals is December 15, 2022, at 3:00 p.m. The award date is February 16, 2022. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Heather Goll at heather.goll@tfc.texas.gov. A copy of the RFP may be downloaded from the Electronic State Business Daily at https://www.txsmartbuy.com/esbddetails/view/303-3-20746.

TRD-202204513
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: November 9, 2022

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Federal Fiscal Year (FFY) 2023 Payment Rates for Medicaid Community Hospice for Routine Home Care, Continuous Home Care, Inpatient Respite Care, General Inpatient Care Services, and the Service Intensity Add-on Effective Retroactive to October 1, 2022

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 29, 2022, at 9:00 a.m. to receive public comments on federal fiscal year 2023 proposed payment rates for the Medicaid Community Hospice Care, effective retroactive to October 1, 2022.

The public hearing will be held in the HHSC North Austin Complex Building, Public Hearing Room 1.401, First Floor, at 4601 W. Guadalupe St., Austin, Texas 78751. Free parking is available in the adjacent parking garage. HHSC will also broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and accessible on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code Section 32.0282, which requires public notice of hearings on proposed Medicaid reimbursements.

Proposal. Federal fiscal year 2023 payment rates for Medicaid Community Hospice for routine home care, continuous home care, inpatient respite care, general inpatient care services, and the service intensity add-on effective retroactive to October 1, 2022.

Methodology and Justification. Payment rates for hospice care are authorized by Section 1814(i)(1)(C)(ii) of the Social Security Act, which outlines annual increases in payment rates for hospice care services. Rates for hospice physician services are not increased under this provision. Section 1814(i)(5)(A)(i) of the Social Security Act requires that beginning with federal fiscal year 2014 and each subsequent federal fiscal year, the Health and Human Services Secretary shall reduce the market basket update by two percentage points for any hospice provider that does not comply with the quality data submission requirements.

Briefing Package. A briefing package describing the proposed payment rates will be available at https://pfd.hhs.texas.gov/rate-packets no later than November 14, 2022. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Provider Finance Department by telephone at (737) 867-7817; by fax at (512) 730-7475; or by email at PFD-LTSS@hhs.texas.gov. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to PFD-LTSS@hhs.texas.gov. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact HHSC Provider Finance by calling (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202204425
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 7, 2022

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for Progressive West Insurance Company, a foreign fire and/or casualty company, to change its name to Drive Insurance Company. The home office is in Mayfield Village, 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, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202204511
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: November 9, 2022

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2461 "20X CASH BLITZ"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2461 is "20X CASH BLITZ". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2461 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2461.

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, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, MONEY BAG SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $40.00, $100, $500 and $5,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2461 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
MONEY BAG SYMBOL	WIN$
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$1.00	ONE$
$2.00	TWO$
$3.00	THR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$

$40.00	FRTY$
$100	ONHN
$500	FVHN
$5,000	FVTH

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 (2461), 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: 2461-0000001-001.

H. Pack - A Pack of "20X CASH BLITZ" Scratch Ticket Game contains 150 Scratch 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 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 - A Texas Lottery "20X CASH BLITZ" Scratch Ticket Game No. 2461.

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 "20X CASH BLITZ" 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. If the player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. 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. The "MONEY BAG" (WIN$), "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear in the WINNING NUMBER Play Symbol spot.

H. The "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 03 and $3).

2.3 Procedure for Claiming Prizes.

A. To claim a "20X CASH BLITZ" Scratch Ticket Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $40.00, $100 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 $40.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "20X CASH BLITZ" Scratch Ticket Game prize of $5,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "20X CASH BLITZ" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "20X CASH BLITZ" 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 "20X CASH BLITZ" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "20X CASH BLITZ" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 Ticket Prizes. There will be approximately 35,040,000 Scratch Tickets in the Scratch Ticket Game No. 2461. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2461 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	3,270,400	10.71
$2.00	2,102,400	16.67
$3.00	467,200	75.00
$5.00	700,800	50.00
$10.00	233,600	150.00
$20.00	233,600	150.00
$40.00	14,600	2,400.00
$100	4,380	8,000.00
$500	80	438,000.00
$5,000	12	2,920,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.99. 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. 2461 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 Game 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. 2461, 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-202204457
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 8, 2022

♦ ♦ ♦

Scratch Ticket Game Number 2462 "30X CASH BLITZ CROSSWORD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2462 is "30X CASH BLITZ CROSSWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2462 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2462.

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: 2X SYMBOL, 3X SYMBOL, 5X SYMBOL, 30X SYMBOL, A, B, C, D, E, F,

G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL.

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. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2462 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
BLACKENED SQUARE SYMBOL	

2X SYMBOL	WINX2
3X SYMBOL	WINX3
5X SYMBOL	WINX5
30X SYMBOL	WINX30

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 (2462), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2462-0000001-001.

H. Pack - A Pack of "30X CASH BLITZ CROSSWORD" Scratch Ticket Game contains 125 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

I. Non-Winning 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 - A Texas Lottery "30X CASH BLITZ CROSSWORD" Scratch Ticket Game No. 2462.

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 "30X CASH BLITZ CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose one hundred forty-one (141) Play Symbols. 30X CASH BLITZ CROSSWORD PLAY INSTRUCTIONS: The player completely scratches all of the YOUR 18 LETTERS Play Symbols. Then the player scratches all the letters found in the 30X CASH BLITZ CROSSWORD puzzle that exactly match the YOUR 18 LETTERS Play Symbols. If the player has scratched at least 3 complete WORDS, the player wins the prize found in the PRIZE LEGEND. Only 1 prize paid per Ticket. Only letters within the 30X CASH BLITZ puzzle that are matched with the YOUR 18 LETTERS Play Symbols can be used to form a complete WORD. Every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 18 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least 3 letters. POWER MULTIPLIER INSTRUCTIONS: The player scratches the POWER MULTIPLIER play area to reveal 2 MULTIPLIER SYMBOLS. If the player reveals 2 matching MULTIPLIER SYMBOLS, then the player multiplies the prize won by that multiplier and wins that amount. For example, a player revealing 2 "30X" MULTIPLIER SYMBOLS will multiply the prize won by 30 TIMES. 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 one hundred forty-one (141) 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. Crossword and Bingo style games do not typically have Play Symbol captions;

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 one hundred forty-one (141) 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 one hundred forty-one (141) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred forty-one (141) 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 one (1) time 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 Play Symbols..

C. A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR 18 LETTERS play area that matches a word in the puzzle.

D. The YOUR 18 LETTERS Play Symbols will all be different on Ticket.

E. There will be a minimum of three (3) vowels in the YOUR 18 LETTERS play area. Vowels area A, E, I, O and U.

F. Each Ticket consists of a 30X CASH BLITZ CROSSWORD puzzle, a YOUR 18 LETTERS play area and a POWER MULTIPLIER play area.

G. All words used will be from the TX_Approve_Words_Vers.2.0423 21.doc.

H. At least fifteen (15) of the YOUR 18 LETTERS Play Symbols will open at least one (1) letter in the puzzle.

I. For each uncovered pattern's prize level the YOUR 18 LETTERS Play Symbols will not always appear in the same spots.

J. The presence or absence of any letter in the YOUR 18 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

K. On Non-Winning Tickets, there will be two (2) completed words in the puzzle.

L. Each Ticket in the Pack will have unique puzzles.

L. All 30X CASH BLITZ CROSSWORD puzzle grid configurations will be formatted within a grid that contains eleven (11) spaces (height) by eleven (11) spaces (width).

M. There will be at least forty-eight (48) different grids used in this game. A grid is an empty 11x11 black and white pattern.

N. Each grid will contain the same number of letters.

O. There is no correlation between any exposed data on a ticket and its status as a winning Ticket or Non-Winning Ticket.

P. No matching words on a Ticket.

Q. All words will contain a minimum of three (3) letters.

R. Words will contain a mixture of nine (9) letters.

S. There will be no more than twelve (1) complete words in a puzzle.

T. No one (1) letter will appear more than ten (10) times within a single standard (11x11) grid.

U. The "2X" (WINX2), "3X" (WINX3), "5X" (WINX5) and "30X" (WINX30) Play Symbols will only appear in the POWER MULTIPLIER play area and will never appear in the 30X CASH BLITZ CROSSWORD or YOUR 18 LETTERS play areas.

V. POWER MULTIPLIER: Two (2) matching POWER MULTIPLIER Play Symbols of "2X" (WINX2), "3X" (WINX3), "5X" (WINX5) or "30X" (WINX30) will only appear on winning Tickets, as dictated by the prize structure.

W. POWER MULTIPLIER: Tickets that do not win in the POWER MULTIPLIER play area will display two (2) different POWER MULTIPLIER Play Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "30X CASH BLITZ CROSSWORD" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $15, $20.00, $30.00, $45.00, $90.00, $150 or $300, 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 $30.00, $45.00, $90.00 or $300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "30X CASH BLITZ CROSSWORD" Scratch Ticket Game prize of $2,000 or $60,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize

of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "30X CASH BLITZ CROSSWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "30X CASH BLITZ CROSSWORD" 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 "30X CASH BLITZ CROSSWORD" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "30X CASH BLITZ CROSSWORD" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 Ticket Prizes. There will be approximately 24,000,000 Scratch Tickets in the Scratch Ticket Game No. 2462. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2462 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3.00	2,496,000	9.62
$5.00	960,000	25.00
$10.00	960,000	25.00
$15.00	576,000	41.67
$20.00	192,000	125.00
$30.00	240,000	100.00
$45.00	30,000	800.00
$90.00	20,000	1,200.00
$150	4,800	5,000.00
$300	800	30,000.00
$2,000	50	480,000.00
$60,000	10	2,400,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.38. 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. 2462 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 Game 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. 2462, 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-202204460

Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 8, 2022

♦ ♦ ♦

Scratch Ticket Game Number 2463 "50X CASH BLITZ"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2463 is "50X CASH BLITZ". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2463 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2463.

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, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, MONEY BAG SYMBOL, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $5,000 and $200,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2463 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI

MONEY BAG SYMBOL	WIN$
10X SYMBOL	WINX10
20X SYMBOL	WINX20
50X SYMBOL	WINX50
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$5,000	FVTH
$200,000	200TH

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 (2463), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2463-0000001-001.

H. Pack - A Pack of "50X CASH BLITZ" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning 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 - A Texas Lottery "50X CASH BLITZ" Scratch Ticket Game No. 2463.

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 "50X CASH BLITZ" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-four (44) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If the player reveals a "50X" Play Symbol, the player wins 50 TIMES the PRIZE for that symbol. 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 forty-four (44) 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 forty-four (44) 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 forty-four (44) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-four (44) 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 twenty (20) 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 four (4) different WINNING NUMBERS Play Symbols. E. Non-winning YOUR NUMBERS Play Symbols will all be different. F. Non-winning Prize Symbols will never appear more than three (3) times. G. The "MONEY BAG" (WIN$), "10X" (WINX10), "20X" (WINX20) and "50X" (WINX50) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots. H. The "10X" (WINX10), "20X" (WINX20) and "50X" (WINX50) Play Symbols will only appear on winning Tickets as dictated by the prize structure. I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s). J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 15 and $15).

2.3 Procedure for Claiming Prizes.

A. To claim a "50X CASH BLITZ" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $25.00, $50.00, $100 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 $25.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X CASH BLITZ" Scratch Ticket Game prize of $5,000 or $200,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50X CASH BLITZ" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "50X CASH BLITZ" 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 "50X CASH BLITZ" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "50X CASH BLITZ" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 Ticket Prizes. There will be approximately 28,080,000 Scratch Tickets in the Scratch Ticket Game No. 2463. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2463 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	2,995,200	9.38
$10.00	1,778,400	15.79
$15.00	936,000	30.00
$25.00	375,400	75.00
$50.00	561,600	50.00
$100	60,840	461.54
$500	1,638	17,142.86
$5,000	20	1,404,000.00
$200,000	10	2,808,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.19. 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. 2463 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 Game 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. 2463, 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-202204461
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 8, 2022

♦ ♦ ♦

Scratch Ticket Game Number 2464 "100X CASH BLITZ"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2464 is "100X CASH BLITZ". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2464 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2464.

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, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, MONEY BAG SYMBOL, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, 100X SYMBOL, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $200, $500, $1,000, $10,000 and $500,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2464 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI

60	SXTY
61	SXON
62	SXTO
63	SXTH
64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
MONEY BAG SYMBOL	WIN$
10X SYMBOL	WINX10
20X SYMBOL	WINX20
50X SYMBOL	WINX50
100X SYMBOL	WINX100
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$500,000	500TH

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 (2464), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2464-0000001-001.

H. Pack - A Pack of "100X CASH BLITZ" Scratch Ticket Game contains 050 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning 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 - A Texas Lottery "100X CASH BLITZ" Scratch Ticket Game No. 2464.

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 "100X CASH BLITZ" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-five (55) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If the player reveals a "50X" Play Symbol, the player wins 50 TIMES the PRIZE for that symbol. If the player reveals a "100X" Play Symbol, the player wins 100 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-five (55) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-five (55) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-five (55) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-five (55) 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 twenty-five (25) 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 five (5) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than four (4) times.

G. The "MONEY BAG" (WIN$), "10X" (WINX10), "20X" (WINX20), "50X" (WINX50) and "100X" (WINX100) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "10X" (WINX10), "20X" (WINX20), "50X" (WINX50) and "100X" (WINX100) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 15 and $15).

2.3 Procedure for Claiming Prizes.

A. To claim a "100X CASH BLITZ" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $100, $200 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 $30.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "100X CASH BLITZ" Scratch Ticket Game prize of $1,000, $10,000 or $500,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "100X CASH BLITZ" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "100X CASH BLITZ" 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 "100X CASH BLITZ" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "100X CASH BLITZ" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 Ticket Prizes. There will be approximately 23,160,000 Scratch Tickets in the Scratch Ticket Game No. 2464. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2464 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	2,779,200	8.33
$20.00	1,505,400	15.38
$30.00	810,600	28.57
$50.00	463,200	50.00
$100	405,300	57.14
$200	33,775	685.71
$500	1,930	12,000.00
$1,000	483	47,950.31
$10,000	20	1,158,000.00
$500,000	8	2,895,000.00

*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 3.86. 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. 2464 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 Game 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. 2464, 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-202204463
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 8, 2022

♦ ♦ ♦

Scratch Ticket Game Number 2465 "200X CASH BLITZ"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2465 is "200X CASH BLITZ". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2465 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2465.

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, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, MONEY BAG SYMBOL, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, 100X SYMBOL, 200X SYMBOL, $20.00, $40.00, $50.00, $100, $200, $500, $2,000, $20,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2465 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI

60	SXTY
61	SXON
62	SXTO
63	SXTH
64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
70	SVTY
71	SVON
72	SVTO
73	SVTH
74	SVFR
75	SVFV
76	SVSX
77	SVSV
78	SVET
79	SVNI
MONEY BAG SYMBOL	WIN$
10X SYMBOL	WINX10
20X SYMBOL	WINX20
50X SYMBOL	WINX50
100X SYMBOL	WINX100
200X SYMBOL	WINX200
$20.00	TWY$
$40.00	FRTY$
$50.00	FFTY$

$100	ONHN
$200	TOHN
$500	FVHN
$2,000	TOTH
$20,000	20TH
$1,000,000	TPPZ

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 (2465), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2465-0000001-001.

H. Pack - A Pack of "200X CASH BLITZ" Scratch Ticket Game contains 025 Scratch Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning 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 - A Texas Lottery "200X CASH BLITZ" Scratch Ticket Game No. 2465.

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 "200X CASH BLITZ" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-six (66) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If the player reveals a "50X" Play Symbol, the player wins 50 TIMES the PRIZE for that symbol. If the player reveals a "100X" Play Symbol, the player wins 100 TIMES the PRIZE for that symbol. If the player reveals a "200X" Play Symbol, the player wins 200 TIMES the PRIZE for that symbol. 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 sixty-six (66) 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 sixty-six (66) 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 sixty-six (66) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-six (66) 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 thirty (30) 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 six (6) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than four (4) times.

G. The "MONEY BAG" (WIN$), "10X" (WINX10), "20X" (WINX20), "50X" (WINX50), "100X" (WINX100) and "200X" (WINX200) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "10X" (WINX10), "20X" (WINX20), "50X" (WINX50), "100X" (WINX100) and "200X" (WINX200) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 40 and $40).

2.3 Procedure for Claiming Prizes.

A. To claim a "200X CASH BLITZ" Scratch Ticket Game prize of $20.00, $40.00, $50.00, $100, $200 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 $40.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "200X CASH BLITZ" Scratch Ticket Game prize of $2,000, $20,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "200X CASH BLITZ" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "200X CASH BLITZ" 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 "200X CASH BLITZ" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "200X CASH BLITZ" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 Ticket Prizes. There will be approximately 10,200,000 Scratch Tickets in the Scratch Ticket Game No. 2465. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2465 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20.00	1,020,000	10.00
$40.00	816,000	12.50
$50.00	408,000	25.00
$100	408,000	25.00
$200	109,650	93.20
$500	10,625	960.00
$2,000	340	30,000.00
$20,000	60	170,000.00
$1,000,000	4	2,550,000.00

*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 3.68. 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. 2465 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 Game 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. 2465, 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-202204464
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 8, 2022

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on November 3, 2022, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. to Recover Funds from the TUSF under PURA §56.025 and 16 TAC §26.406 For Calendar Year 2020, Docket Number 54314.

The Application: Valley Telephone Cooperative, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Valley Telephone Cooperative for 2020. Valley Telephone Cooperative requests that the Commission allow recovery of funds from the TUSF in the amount of $2,363,905.25 for 2020 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. 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 54314.

TRD-202204504
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2022

♦ ♦ ♦

Notice of Application for True-Up of 2019 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2022, for true-up of 2019 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Community Telephone Company, Inc. for True-Up of 2019 Federal Universal Service Fund Impacts to Texas Universal Service Fund, Docket Number 54290.

The Application: Community Telephone Company, Inc. filed a true-up in accordance with findings of fact 19 and 20 and ordering paragraphs 2, 3, and 4 of the Notice of Approval issued in Docket No. 50965.[1] In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Community received in Federal Universal Service Fund (FUSF) revenue by $902,438 for calendar year 2019. It was also estimated that Community would recover $66,972 of the projected FUSF revenue impact from rate increases implemented for the time period. Community's request to recover the remaining $835,466 from the Texas Universal Service Fund (TUSF) for 2019 was approved. Based on the data, calculations, supporting documentation and affidavits included with the application, Community stated that the realized FUSF losses for 2019 were $510,957. Therefore, Community is due to refund the TUSF in the amount of $324,509 because of this true-up.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. 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 54290.

[1]*Application of Community Telephone Company, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406 for Calendar Year 2019,* Docket No. 50965, Order (Jan. 31, 2022).

TRD-202204505
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2022

♦ ♦ ♦


TEXAS

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)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is $502 annually for first-class mail delivery and $340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis