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THE GOVERNOR

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

Appointments

Appointments for December 21, 2022

Appointed to the State Commission on Judicial Conduct for a term to expire November 19, 2027, Andrew M. "Andy" Kahan of Houston, Texas (replacing Sujeeth Draksharam of Sugar Land, whose term expired).

Appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2027, Cynthia "Cyndi" Wheless of McKinney, Texas (replacing Lisa K. Jarrett of San Antonio, who resigned).

Designated as presiding officer of the Texas Juvenile Justice Board for a term to expire at the pleasure of the Governor, Hon. David "Scott" Matthew of Georgetown, Texas (Mr. Matthew is replacing Lisa K. Jarrett of San Antonio as presiding officer).

Appointed to the Texas Water Development Board effective January 1, 2023, for a term to expire February 1, 2023, L'Oreal Stepney of Pflugerville, Texas (replacing Kathleen T. Jackson of Beaumont, who resigned). (*This appointment was published in the December 23, 2022, issue of the Texas Register with an incorrect effective date of January 2, 2023.*)

Greg Abbott, Governor

TRD-202205249



Proclamation 41-3949

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Antionette La'Quitta Oliver, D.O.B. July 22, 1990, was sentenced in the McKinney Municipal Court in Collin County on March 30, 2015, to a fine of \$269 for the offense of Assault by Contact, Cause No. 15A0252501; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of full Civil Rights of Citizenship:

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

ANTIONETTE LA'QUITTA OLIVER

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE

SET OUT IN A COURT IN CAUSE NO. 15A0252501, IN COLLIN COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 22nd day of December, 2022.

Greg Abbott, Governor

TRD-202205250



Proclamation 41-3950

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Samantha Jo Martinez, D.O.B. December 15, 1985, was sentenced in the County Court in Wharton County on June 28, 2006, to one year of deferred adjudication probation for the offense of Sale of Alcoholic Beverage to Minor, Cause No. 52590; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of Full Civil Rights of Citizenship;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

SAMANTHA JO MARTINEZ

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 52590, IN WHARTON COUNTY, TEXAS.

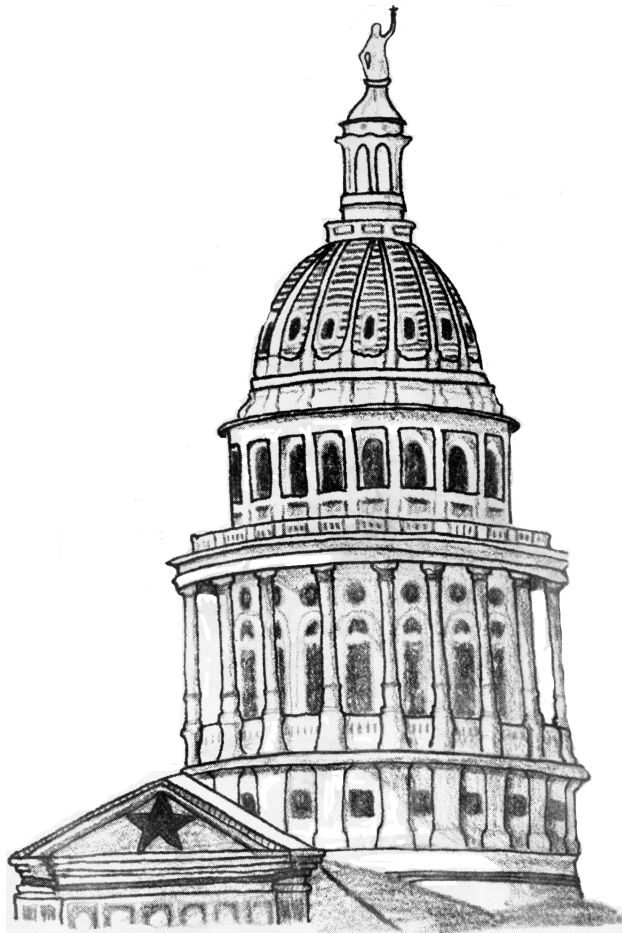
I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 22nd day of December, 2022.

Greg Abbott, Governor

TRD-202205251





PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §§18.21, 18.23, 18.24

The Texas Ethics Commission (the Commission) proposes the repeal of §§18.21, 18.23 and 18.24 of Chapter 18, Title 1 of the Texas Administrative Code, regarding the administrative waivers of statutory civil penalties for late filing of statements and reports.

The Commission seeks to simplify the rules and streamline the processing of requests for waiver or reduction of civil penalties for late reports assessed through the "administrative process." The rules as currently constructed are overly complicated. The complexity makes it difficult and time consuming for staff to process waiver requests. The complexity also makes it difficult for the regulated community to understand their rights under the rules. The Commission believes the rules need to fundamentally change for the Commission to timely process waiver requests. This repeal is submitted along with new Ethics Commission Rules §18.21, §18.24, and amendments to §18.25 and §18.26, which are submitted separately.

James Tinley, General Counsel, has determined that for the first five-year period the repeal of the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal of the rule.

The General Counsel has also determined that for each year of the first five years the proposed repeal of the rule is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding the reduction or waiver of administrative penalties. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

The General Counsel has determined that during the first five years that the proposed repeal of the rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repeal of the rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or

mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repeal of the rule may do so at any Commission meeting during the agenda item relating to the proposed repeal of the rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The repeal of the rules is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed repeal of the rules affects Title 15 of the Election Code.

§18.21. Jurisdiction to Consider Waiver Request.

§18.23. Administrative Waiver of Statutory Civil Penalties.

§18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil Penalties.

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 December 22, 2022.

TRD-202205173

Jim Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 5, 2023

For further information, please call: (512) 463-5800



1 TAC §§18.21, 18.24 - 18.26

The Texas Ethics Commission (commission) proposes new rules 1 TAC §18.21, regarding Jurisdiction to Consider Waiver Request, and 1 TAC §18.24, regarding General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil Penalties. Additionally, the commission proposes amendments to 1 TAC §18.25, regarding Administrative Waiver or Reduction of Certain Statutory Civil Penalties, and 1 TAC §18.26, regarding Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500.

The Commission seeks to simplify the rules and streamline the processing of requests for waiver or reduction of civil penalties for late reports assessed through the administrative process. The rules as currently constructed are overly complicated. The complexity makes it difficult and time consuming for staff to

process waiver requests. The complexity also makes it difficult for the regulated community to understand their rights under the rules. The Commission believes the rules need to fundamentally change for the Commission to timely process waiver requests. These proposed amendments are submitted along with the proposed repeal of 1 TAC §§18.21, 18.23 and 18.24, which is submitted separately.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new and amended rules.

The General Counsel has also determined that for each year of the first five years the proposed new and amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding the reduction or waiver of administrative penalties. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

The General Counsel has determined that during the first five years that the proposed new and amended rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed new and amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed new and amended rules may do so at any Commission meeting during the agenda item relating to the proposed new and amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The new rules and amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposal affects Title 15 of the Election Code.

§18.21. Jurisdiction to Consider Waiver Request.

(a) A filer may ask the commission to waive or reduce a civil penalty determined by §§ 305.033(b) or 572.033(b) of the Government Code, or §254.042(b) of the Election Code by submitting a written request to the commission.

(b) The commission will not consider a request under subsection (a) of this section unless the filer, not later than 60 days after the report or statement was due:

- (1) submits the request in the manner prescribed by subsection (a) of this section;
- (2) files all reports owed to the commission; and
- (3) pays all outstanding civil penalties owed to the commission that are not subject to a pending request for waive or appeal.

(c) Upon a showing of good cause, the executive director may extend the deadline in subsection (b) of this section.

§18.24. General Guidelines for Administrative Waiver or Reduction of Statutory Civil Penalties.

(a) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil penalty under §18.25 of this title (relating to Administrative Waiver or Reduction of Certain Statutory Civil Penalties) or §18.26 of this title (relating to Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500) of this title, a "prior late offense" is any report for which a civil penalty for late filing was assessed, regardless of whether the civil penalty was waived or reduced. The term does not include:

(1) reports for which no late notices were sent and the filer did not file a request that the civil penalty be waived or reduced for the prior late report; and

(2) reports determined by the executive director to be not required.

(b) A civil penalty that is reduced under §18.25 or §18.26 of this title will revert to the full amount originally assessed if the reduced civil penalty is not paid within thirty (30) calendar days from the date of the letter informing the filer of the reduction.

(c) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting a request for appeal in writing to the commission.

(1) The request for appeal should state the filer's reasons for requesting an appeal, provide any additional information needed to support the request, and state whether the filer would like the opportunity to appear before the commission and offer testimony regarding the appeal.

(2) The executive director may review the appeal and reconsider the determination made under §18.25 or §18.26 of this title or set the appeal for a hearing before the commission.

(3) After hearing a request for appeal, the commission may affirm the determination made under §18.25 or §18.26 of this title or make a new determination based on facts presented in the appeal.

(d) For purposes of determining a waiver or reduction of a civil penalty under §18.26 of this title, a filer requesting a waiver or reduction will be categorized as follows:

(1) Category A includes candidates for and officeholders of the following offices and specific-purpose committees supporting candidates for and officeholders of the following offices:

- (A) statewide office;
- (B) legislative office;
- (C) district judge;
- (D) state appellate court justice;
- (E) State Board of Education member; and
- (F) Secretary of State.

(2) Category B includes all filers not categorized in Category A, as defined by paragraph (1) of this subsection, or Category C, as defined by paragraph (3) of this subsection. Examples of Category B filers include the following filer types:

- (A) lobbyists;
- (B) salaried non-elected officials;
- (C) candidates for and officeholders of district attorney;

(D) candidates for and officeholders of political party chair;

(E) political committees with \$5,000 or more in annual activity in the calendar year in which the late report was due; and

(F) a legislative caucus.

(3) Category C includes:

(A) unsalaried appointed board members and officials; and

(B) political committees with less than \$5,000 in annual activity in the calendar year in which the late report was due.

(c) For purposes of a reduction of a civil penalty under §18.26 of this title, good cause includes, but is not limited to, the following:

(1) The report was filed no later than three days after the date it was due;

(2) The filer filed the report within five days after first learning the report was late from a late notice sent by the commission;

(3) The report was not a critical report and was prepared and placed in the mail on time but not postmarked by the deadline;

(4) The filer had technical difficulties after regular business hours, but the report was filed no later than the next business day after the commission's technical support staff fixed the technical difficulty;

(5) There are no funds in the filer's campaign or officeholder account and the filer is unemployed; or

(6) A first-time filer that is required to file campaign finance reports with a county filing authority and personal financial statements with the commission, who mistakenly files the personal financial statement with the county on the filing deadline and then correctly files with the commission within seven days of realizing the mistake.

§18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties.

(a) The executive director shall apply this section to:

(1) a late report subject to a statutory civil penalty of not more than \$500; or

(2) a late report that:

(A) is subject to a statutory civil penalty in excess of \$500; and

(B) discloses less than \$5,000 [~~\$3,000~~] in total political contributions and less than \$5,000 [~~\$3,000~~] in total political expenditures for the reporting period.

(b) The executive director shall use the following chart to determine the level of waiver or reduction of a civil penalty under this section:

Figure: 1 TAC §18.25(b)

[(b) In order to qualify for a waiver or reduction of a civil penalty under this section, a filer must meet all of the following criteria:]

[(1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;]

[(2) The filer filed the report within thirty (30) days of learning the report was late;]

[(3) The civil penalty for the report at issue has not been increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and]

[(4) The filer does not have an outstanding civil penalty for a prior late report.]

[(c) The executive director shall use the following chart to determine the level of waiver or reduction of a civil penalty under this section:]

[Figure: 1 TAC §18.25(c)]

§18.26. Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500.

(a) The executive director shall apply this section to a late report that discloses more than \$5,000 [~~\$3,000~~] in total political contributions or more than \$5,000 [~~\$3,000~~] in total political expenditures during the reporting period and that is subject to a civil penalty in excess of \$500.

(b) - (c) (No change).

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

Filed with the Office of the Secretary of State on December 22, 2022.

TRD-202205174

Jim Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 5, 2023

For further information, please call: (512) 463-5800



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 121. BEHAVIOR ANALYST

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 TAC, Chapter 121, Subchapter A, §121.10; Subchapter B, §§121.20 - 121.22, 121.27, and 121.30; Subchapter D, §121.71 and §121.75; and Subchapter G, §121.90 and §121.95; new rules at 16 Texas Administrative Code (TAC), Chapter 121, Subchapter B, §121.26; Subchapter D, §§121.70, 121.72 - 121.74; Subchapter E, §§121.76 - 121.81; and Subchapter F, §121.85; and the repeal of existing rules at 16 Texas Administrative Code (TAC), Chapter 121, §§121.23, 121.24, 121.26, 121.50, 121.70, and 121.80 regarding the Behavior Analyst program; and the addition of subchapter titles to an existing chapter. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 121, implement Texas Occupations Code, Chapter 506.

The proposed rules implement changes from the internal four-year rule review. The proposed rules are necessary to provide guidelines to health professionals for the use of telehealth, update rule provisions to reflect current Department procedures, restructure the existing rules for better organization, and amend outdated rule language.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Behavior Analyst Advisory Board at its meeting on December 1, 2022. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules create new Subchapter A, General Provisions.

The proposed rules amend §121.10, Definitions. The proposed rules remove references to supervision which have been moved to §121.76, Supervision; references to telehealth, which have been moved to Subchapter E, Telehealth; clarifies terms and removes definitions that are not used throughout the chapter.

The proposed rules create new Subchapter B, Licensing Requirements.

The proposed rules amend §121.20, Applications, which includes provisions from §121.23, Examinations, which was repealed and relocated into this section, and amends outdated rule language.

The proposed rules amend §121.21, Behavior Analyst Licensing Requirements, which includes provisions from §121.24, Educational Requirements, which was repealed and relocated into this section, and amends outdated rule language.

The proposed rules amend §121.22, Assistant Behavior Analyst Licensing Requirements, which includes provisions from §121.24, Educational Requirements, which was repealed and relocated into this section, and amend outdated rule language.

The proposed rules repeal §121.23, Examinations, as the text is being relocated to the proposed §121.20 discussed above.

The proposed rules repeal §121.24, Educational Requirements, as the text is being relocated to the proposed §§121.21-121.22.

The proposed rules repeal §121.26, Renewal, as the text is being repropounded due to extensive changes outlined below.

The proposed rules add new §121.26, Renewal, by clarifying the requirements for renewal, including term of license, and removes the provision which prevents the department from renewing the license of a person who is in violation of rules or law at the time of renewal and amending outdated rule language.

The proposed rules amend §121.27, Inactive Status, update language to clarify that there is no fee to move from an active to inactive license status.

The proposed rules amend §121.30, Exemptions, to align the rule with statutory provisions.

The proposed rules repeal §121.50, Reporting Requirements, as the text is being relocated to the proposed §121.74, Reporting Requirements.

The proposed rules create new Subchapter C, Advisory Boards.

The proposed rules create new Subchapter D, Responsibilities of License Holders.

The proposed rules repeal §121.70, Administrative Practice Responsibilities of License Holders, as the text is being repropounded due to extensive changes outlined below.

The proposed rules add new §121.70, Administrative Practice Responsibilities of License Holders, which remove duplicative

provisions included in §121.95; moves license display requirements to new §121.72; moves recordkeeping requirements to §121.73; and moves telehealth requirements to Subchapter E, Telehealth.

The proposed rules amend §121.71, Professional Services Practice Responsibilities of License Holders, which clarify the definition and function of a treatment plan; and moves telehealth requirements to Subchapter E, Telehealth.

The proposed rules add new §121.72, Display of License, which relocates license display provisions and limitations related to the photocopy and reproduction of a license from §121.70, as discussed above.

The proposed rules add new §121.73, Recordkeeping Requirements, which relocates requirements from §121.70, and clarifies who owns and is responsible for maintaining patient records.

The proposed rules add new §121.74, Reporting Requirements, which relocates requirements from §121.74 without changes, which was repealed as discussed above.

The proposed rules amend §121.75, Code of Ethics, which includes amendments to outdated rule language.

The proposed rules create new Subchapter E, Telehealth.

The proposed rules add new §121.76, Definitions Relating to Telehealth, which relocates definitions related to telehealth and aligns them with other department health programs.

The proposed rules add new §121.77, Service Delivery Methods, which relocates delivery methods defined in §121.10 and §121.70 and aligns them with other department health programs.

The proposed rules add new §121.78, Technology and Equipment Requirements, which relocates telecommunications requirements related to equipment and competencies from §§121.70-121.71.

The proposed rules add new §121.79, License Holder Responsibilities for Providing Telehealth Services and Using Telehealth, which relocates responsibilities for providers from §§121.70-121.71 and aligns them with other department health programs.

The proposed rules add new §121.80, Use of Facilitators with Telehealth, which relocates requirements regarding facilitators for telehealth from §121.71.

The proposed rules add new §121.81, Client Contacts and Communications, which relocates requirements regarding required notifications to clients and complaint information from §121.70.

The proposed rules repeal §121.80, Fees, which has been relocated to new Subchapter F, discussed below.

The proposed rules create new Subchapter F, Fees.

The proposed rules add new §121.85, Fees, which relocates §121.80 without changes.

The proposed rules create new Subchapter G, Enforcement.

The proposed rules amend §121.90, Basis for Disciplinary Action, to provide more concise language related to which disciplinary actions can be taken against a license holder.

The proposed rules amend §121.95, Complaints, adds a requirement to include a parent or authorized representative in the complaint process and amends outdated rule language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be more effective and efficient regulation of behavior analysts and assistant behavior analysts, which enhances the health, safety, and welfare of the public.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed 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.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand a regulation to require records created as a result of treatment in a school setting to be maintained as part of the student's permanent school record, expand the definitions for telehealth and telecommunications.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§121.23, 121.24, 121.26, 121.50, 121.70, 121.80

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapters 51 and 506, 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 proposed repeals are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed repeals.

§121.23. *Examination.*

§121.24. *Educational Requirements.*

§121.26. *Renewal.*

§121.50. *Reporting Requirements.*

§121.70. *Administrative Practice Responsibilities of License Holders.*

§121.80. *Fees.*

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 December 22, 2022.

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Brad Bowman

General Counsel

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SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §121.10

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 506, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.10. Definitions.

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

(1) (No changes.)

(2) Advertising--The offer to perform behavior analysis services by an individual or ~~solicitation for~~ business, including utilizing the titles "licensed behavior analyst" or "licensed assistant behavior analyst."

(3) - (4) (No changes.)

~~[(5) Asynchronous telehealth-- Store and forward telehealth practice including the transmission of images or data when the data transfer does not occur in real-time].~~

(5) ~~[(6)]~~ Authorized representative--A person or entity that is authorized to represent the interests of a client and ~~[to]~~ perform functions including making decisions about behavior analysis services.

(6) ~~[(7)]~~ Behavior Analyst Certification Board (BACB)--A certifying entity for persons practicing behavior analysis.

(7) Client--A person who is:

(A) an individual receiving behavior analysis services from a license holder;

(B) an authorized representative of the individual receiving behavior analysis services; or

(C) an individual, institution, school, school district, educational institution, agency, firm, corporation, organization, government or governmental subdivision, business trust, estate, trust, partnership, association, or any other legal entity not receiving behavior analysis services for their own treatment purposes.

~~[(8) Client--A person who is receiving behavior analysis services from a license holder for the person's own treatment purposes, or a person or entity who is not receiving behavior analysis services from a license holder for their own treatment purposes including:]~~

~~[(A) an authorized representative of the person receiving behavior analysis services for the person's own treatment purposes; or]~~

~~[(B) an individual, institution, school, school district, educational institution, agency, firm, corporation, organization, government or governmental subdivision, business trust, estate, trust, partnership, association, or any other legal entity.]~~

~~[(9) Client site--The physical location of a client at the time behavior analysis services are practiced through synchronous or asynchronous telehealth. Also termed the origination site.]~~

~~[(8) [(40)] Commission--The Texas Commission of Licensing and Regulation.~~

~~[(9) [(41)] Department--The Texas Department of Licensing and Regulation.~~

~~[(10) [(42)] Direct observation--A method of data collection that consists of observing the object of study in a particular situation or environment.~~

~~[(13) Direct supervision--Supervision of a person who is performing behavior analysis services with a client.]~~

~~[(11) [(44)] Executive director--The executive director of the department.~~

~~[(15) Facilitator--An individual physically present with a client who assists with the delivery of behavior analysis services at the direction of a behavior analyst or assistant behavior analyst.]~~

~~[(12) [(46)] Indirect supervision--Supervision of a person who performs behavior analysis services but which does not occur when services are being provided to a client. This may include behavioral skills training and delivery of performance feedback; modeling technical, professional, and ethical behavior; guiding behavioral case conceptualization, problem-solving, and decision-making repertoires; review of written materials such as behavior programs, data sheets, or reports; oversight and evaluation of the effects of behavioral service delivery; and ongoing evaluation of the effects of supervision.~~

~~[(13) [(47)] License--A license issued under the Act authorizing a person to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.~~

~~[(14) [(48)] License holder--A person who has been issued a license in accordance with the Act to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.~~

~~[(15) [(49)] Multiple relationship--A personal, professional, business, or other type of interaction by a license holder with a client or with a person or entity involved with the provision of behavior analysis services to a client that is not related to, or part of, the behavior analysis services.~~

~~[(20) Provider--An individual who holds a current, renewable, behavior analyst or assistant behavior analyst license under this chapter, or who is authorized to provide behavior analysis services.]~~

~~[(21) Provider site--The physical location of a provider at the time behavior analysis services are furnished through synchronous or asynchronous telehealth. Also termed the distance site.]~~

(16) [(22)] Service agreement--A signed written contract for behavior analysis services. A service agreement includes responsibilities and obligations of all parties and the scope of behavior analysis services to be provided. A service agreement may be identified by other terms including treatment agreement, Memorandum of Understanding (MOU), or Individualized Education Program (IEP).

(17) [(23)] Supervision--Supervision of a person who performs behavior analysis services, and may include both direct and indirect supervision. A license holder may engage in direct supervision or indirect supervision in-person and on-site, through telehealth, or in another manner approved by the license holder's certifying entity.

[(24)] Synchronous telehealth--telehealth services that require transmission of images, video, or data through a communication link for real-time interaction to take place.]

[(25)] Telecommunications--Interactive communication by two-way transmission using telecommunications technology, including, but not limited to sound, visual images, or computer data.]

[(26)] Telecommunications technology--Computers and equipment used or capable of use for purposes of telecommunications, other than analog telephone, email, or facsimile technology and equipment. Telecommunications technology includes, but is not limited to:]

[(A)] compressed digital interactive video, audio, or data transmission;]

[(B)] clinical data transmission using computer imaging by way of still-image capture, storage and forward; and]

[(C)] other technology that facilitates the delivery of telehealth services.]

(18) Telehealth--See definitions in Subchapter E. Telehealth.

[(27)] Telehealth service--The meaning of "telehealth service" is the same as defined in Occupations Code Chapter 111.]

(19) [(28)] Treatment plan--A written behavior change program for an individual client. A treatment plan includes consent, objectives, procedures, documentation, regular review, and exit criteria. A treatment plan may be identified by other terms including Behavior Intervention Plan, Behavior Support Plan, Positive Behavior Support Plan, or Protocol.

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

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SUBCHAPTER B. LICENSING REQUIREMENTS

16 TAC §§121.20 - 121.22, 121.26, 121.27, 121.30

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 506, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.20. Applications.

(a) Unless otherwise indicated, an applicant [applicants] for a license must submit all required information [on department-approved forms or] in a manner specified by the department.

(b) An applicant [Applicants] must submit the following:

(1) - (2) (No change.)

(3) the fee required under §121.85 [§121.80].

(c) Upon request, the [The] department may require an applicant to submit additional information or documentation for evaluation of an applicant's qualifications, including the following:

(1) - (7) (No change.)

(8) documentation demonstrating passage of the Board Certified Behavior Analyst examination, or an equivalent examination offered by the certifying entity, in applied behavior analysis [successful completion of applicable examination requirements, including a pass/fail report];

(9) - (11) (No change.)

(d) - (g) (No change.)

§121.21. Behavior Analyst Licensing Requirements.

(a) To qualify for licensure as a behavior analyst, a person must:

(1) hold current certification as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst-Doctoral or equivalent, issued by the Behavior Analyst Certification Board or its equivalent as approved by the department; [and]

(2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and[.]

(3) meet the educational requirements of the certifying entity for the Board Certified Behavior Analyst, the Board Certified Behavior Analyst-Doctoral, or an equivalent standard of the certifying entity approved by the department.

(b) (No change.)

(c) A person [Persons] who holds a [hold] current certification by the certifying entity but who does [dø] not hold a current license may not:

(1) - (2) (No change.)

(d) - (e) (No change.)

§121.22. Assistant Behavior Analyst Licensing Requirements.

(a) To qualify for licensure as an assistant behavior analyst, a person must:

(1) (No change.)

(2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; [and]

(3) be in compliance with the applicable supervision requirements of the certifying entity at all times when practicing behavior analysis; and[.]

(4) meet the educational requirements of the certifying entity for the Board Certified Assistant Behavior Analyst or an equivalent standard of the certifying entity approved by the department.

(b) A person [Persons] who is [are] subject to or has [have] received a disciplinary action by the certifying entity may be ineligible for a license.

(c) A person [Persons] who holds a [hold] current certification by the certifying entity but who does [dø] not hold a current license may not:

(1) - (2) (No change.)

(d) A person [Persons] who holds [hold] a current Texas license may use the title "licensed assistant behavior analyst" or a reasonable abbreviation of the title that is accurate and not misleading, including "LaBA," "L.a.B.A.," "TXLaBA," or "TX. L.a.B.A." The letter "a" representing the word "assistant" may not be capitalized unless the abbreviation clearly represents the word "assistant," including "Lic. Asst. BA," "TX L. Assist. B.A." or similar.

(e) (No change.)

§121.26. Renewal.

(a) A behavior analyst and assistant behavior analyst license is valid for two years from the date of issuance and may be renewed biennially.

(b) A license holder is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew a license, a license holder must:

(1) submit a completed renewal application on a department-approved form;

(2) provide a current certification number from the BACB;

(3) successfully pass a criminal history background check;

and

(4) submit the fee required under §121.85.

(d) The license holder must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(e) A person whose license has expired may not provide or offer to provide behavior analysis services or use the title or represent or imply that he or she has the title of "licensed behavior analyst" or "licensed assistant behavior analyst" and may not use any variation of those.

(f) A person whose certification is on inactive status with the certifying entity may renew a license that is on inactive status with the department if the person is in compliance with the requirements for inactive status with the certifying entity.

(g) A person whose certification is on inactive status with the certifying entity may not renew a license that is on active status with the department.

§121.27. Inactive Status.

(a) To change a license to inactive status, an applicant must submit a complete application on a department-approved form. There is no fee required to change from active status to inactive status.

(b) A person whose license is on inactive status may not:

(1) - (2) (No change.)

(3) participate in a supervision relationship with another license holder or unlicensed person [unless an active license is not required for the license holder's activity]; or

(4) (No change.)

(c) - (d) (No change.)

(e) To change from an inactive license status to an active license status, a person must:

(1) (No change.)

(2) pay the fee required under §121.85(b)(6) [~~§121.80(b)(6)~~]; and

(3) (No change.)

§121.30. Exemptions.

(a) (No change.)

(b) A person who is no longer eligible for an exemption under §§506.051 - 506.059 of the Act is [Persons who are providing services for which a license is required under the Act or this chapter but who are not certified by a certifying entity may be] required to become certified by a certifying entity approved by the department and obtain a license under this chapter [in order] to continue to provide services.

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

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Brad Bowman
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SUBCHAPTER D. RESPONSIBILITIES OF LICENSE HOLDERS

16 TAC §§121.70 - 121.75

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 506, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.70. Administrative Practice Responsibilities of License Holders.

(a) Licenses issued by the department remain the property of the department and shall be surrendered to the department on demand.

(b) A license holder shall:

(1) inform the department of any violations of this chapter or the Act;

(2) promptly provide upon request any documents or information that satisfactorily demonstrates to the department the license holder's qualifications for certification by the certifying entity or for licensure by the department;

(3) report, in accordance with §121.74, to the department any fact that may affect a license holder's qualifications to hold a certification or license;

(4) truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the department;

(5) not interfere with a department investigation or disciplinary proceeding in any way, including by misrepresentation or omission of facts to the department or using threats or harassment against any person;

(6) comply with any order issued by the commission or the executive director that relates to the license holder;

(7) comply with applicable professional and ethical standards and requirements including those of the license holder's certifying entity when creating a written agreement for services;

(8) upon revision or amendment of a written agreement for services, obtain the signatures of all parties;

(9) not delegate any services, functions, or responsibilities requiring professional competence to a person not competent or not properly credentialed. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder; and

(10) use electronic methods to create, amend, or sign documents, and accept signatures of clients on documents related to the provision of behavior analysis services, only in accordance with applicable law.

§121.71. Professional Services Practice Responsibilities of License Holders.

(a) A license holder shall:

(1) enter into a service agreement with a client, as defined in §121.10, when behavior analysis services are to be provided;

(A) (No change.)

(B) A behavior analyst shall create a written treatment plan when the service agreement provides for delivering treatment to an individual.

(C) (No change.)

(2) - (4) (No change.)

(b) - (c) (No change.)

~~[(d) Professional Services Practice Responsibilities: Telehealth.]~~

~~[(1) Except to the extent it imposes additional or more stringent requirements, this subsection does not affect the applicability of any other requirement or provision of law to which a person is subject under the Act, this chapter, or other law, or by the person's certifying entity, when the person is functioning as a provider of telehealth services.]~~

~~[(2) The requirements of this section apply to the use of telehealth by behavior analysts and assistant behavior analysts licensed under this chapter.]~~

~~[(3) A license holder shall provide the same quality of services via telehealth as is provided during in-person sessions. A telehealth provider shall maintain a focus on evidence-based practice and identify appropriate meaningful outcomes for a client. When an established telehealth procedure is not available, a license holder shall notify a client or multi-disciplinary team, as appropriate, that the effectiveness of the procedure has not yet been established for the method, manner, or mode of treatment.]~~

~~[(4) A telehealth provider shall notify a client or multi-disciplinary team, as appropriate, of the conditions of telehealth services, including, but not limited to, the right to refuse telehealth services, options for service delivery, differences between in-person and remote service delivery methods, and instructions for filing and resolving complaints.]~~

~~[(A) A telehealth provider shall obtain client consent before services may be provided through telehealth.]~~

~~[(B) A provider shall consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth.]~~

~~[(C) If a client previously consented to in-person services, a telehealth provider shall obtain updated consent to include telehealth services.]~~

~~[(5) Telehealth providers shall not provide services by correspondence only, e.g., mail, email, or faxes, although these may be used as adjuncts to telehealth.]~~

~~[(6) The initial contact between a license holder and a client may be at the same physical location or through telehealth, as deemed appropriate by the license holder.]~~

~~[(7) Telehealth providers shall comply with all laws, rules, and certifying entity requirements governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.]~~

~~[(8) A telehealth provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of a client when providing services through telehealth.]~~

~~[(9) Supervision undertaken through telehealth must meet the standards of the certifying entity.]~~

~~[(10) Subject to the requirements and limitations of this section, a telehealth provider may utilize a facilitator at a client site to assist the provider in rendering telehealth services.]~~

~~[(11) A telehealth provider, before allowing a facilitator to assist a provider in rendering telehealth services, shall ascertain a facilitator's qualifications, training, and competence, as appropriate and reasonable, for each task a provider directs a facilitator to perform, and in the methodology and equipment a facilitator is to use.]~~

~~[(12) A facilitator may perform at a client site only the following tasks:]~~

~~[(A) a task for which a facilitator holds and acts in accordance with any relevant license, permit, or authorization required or exemption available under the Texas Occupations Code to perform the task; and]~~

~~[(B) those physical, administrative, and other tasks for which a telehealth provider determines a facilitator is competent to perform in connection with the rendering of behavior analysis services for which no license, permit, or authorization under the Texas Occupations Code is required or to which an exemption applies.]~~

~~[(13) A telehealth provider shall be able to see and hear a client and a facilitator, if used, via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions, when providing telehealth services.]~~

~~[(14) A telehealth provider shall not render telehealth services to a client if the presence of a facilitator is required for safe and effective service to a client and no qualified facilitator is available.]~~

~~[(15) A telehealth provider shall document the provider's telehealth services to the same standard as in-person services.]~~

§121.72. Display of License.

(a) A license holder shall display the current original license certificate issued by the department in the primary location of practice, if any, or in the license holder's business office.

(b) In the absence of a primary location of practice or business office, or when the license holder is employed in multiple locations, the license holder shall carry a current license identification card issued by the department.

(c) A license holder shall not:

(1) display a photocopy or other reproduction of a license certificate or identification card; or

(2) alter a license certificate or identification card.

§121.73. Recordkeeping Requirements.

(a) A licensee shall maintain legible and accurate records of behavior analysis services rendered.

(1) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

(2) Providers shall comply with all laws, rules, and certifying entity requirements governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(3) Records created as a result of treatment in a school setting shall be maintained as part of the student's permanent school record.

(b) A license holder practicing in an educational setting, school, learning center, or clinic shall comply with the recordkeeping requirements of the service setting or with the retention requirements of the certifying entity, if the latter are more stringent.

(c) Records shall be maintained for a minimum of the longer of:

(1) seven years following the termination of behavior analysis services;

(2) seven years following the date on which a minor client reaches the age of 22; or

(3) the retention period required by the certifying entity.

§121.74. Reporting Requirements.

(a) A license holder shall report the following in a manner prescribed by the department within ten days:

(1) Surrender, voluntary termination, or expiration of the license holder's certification;

(2) Commencement of inactive status of the license holder's certification;

(3) Limitation on or termination of the license holder's certification;

(4) Suspension, probation, reprimand, or any other discipline or revocation of the license holder's certification;

(5) A violation by the license holder of the certifying entity's requirements, the Act, or this chapter;

(6) The license holder's placement on deferred adjudication or criminal conviction, other than a Class C misdemeanor traffic offense;

(7) The settlement of or judgment rendered in a civil lawsuit filed against the license holder relating to the license holder's professional behavior analysis practice; or

(8) An action against the license holder by a governmental agency or by a licensing or certification body.

(b) A license holder shall report a change in name or contact information to the department within thirty days in a manner prescribed by the department.

§121.75. Code of Ethics.

(a) (No change.)

(b) A license holder [License holders] shall comply with the following ethical standards when providing behavior analysis services. A license holder [All license holders] shall:

(1) - (23) (No change.)

(c) (No change.)

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

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SUBCHAPTER E. TELEHEALTH

16 TAC §§121.76 - 121.81

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 506, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.76. Definitions Relating to Telehealth.

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

(1) Client site--The physical location of the client at the time the telehealth services are being provided.

(2) Facilitator--An individual physically present with a client who assists with the delivery of behavior analysis services through telehealth at the direction of a behavior analyst or assistant behavior analyst.

(3) Provider--An individual who provides telehealth services and holds a current:

(A) behavior analyst license under Texas Occupations Code §506.253 and §506.255; or

(B) assistant behavior analyst license under Texas Occupations Code §§506.254 - §506.255.

(4) Provider site--The physical location of the provider at the time the telehealth services are provided that is distant or remote from the client site.

(5) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(6) Telecommunications technology--Computers, smart phones, and equipment, other than email or fax, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive audio-video, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture, storage and forward;

(C) smart phones, or any audio-visual, real-time, or two-way interactive communication system; and

(D) other technology that facilitates the delivery of telehealth services.

(7) Telehealth--The use of telecommunications and telecommunications technologies for the exchange of information from one site to another for the provision of behavior analysis services to a client from a provider, including for assessments, interventions, or consultations.

(8) Telehealth services--The application of telecommunications technology to deliver behavior analysis services at a distance for assessment, intervention, and/or consultation including the rendering of behavior analysis services through telehealth to a client who is physically located at a site other than the site where the provider is located.

§121.77. Service Delivery Models.

(a) Telehealth providers shall only provide behavior analysis services to an individual via audio-visual telecommunication, and shall not provide services by audio communication, or correspondence including mail, email, or fax, although these may be used as adjuncts to telehealth.

(b) Telehealth may be delivered in a variety of ways, including, but not limited to:

(1) the store-and-forward model/electronic transmission which is an asynchronous electronic transmission of stored clinical data from one location to another;

(2) the clinician interactive model which is a synchronous, real-time interaction between the provider and client that occurs via audio-visual telecommunication; and

(3) the self-monitoring/testing model which occurs when the client receiving the services provides data to the provider without a facilitator present at the site of the client.

(c) Live versus stored data refers to the actual data transmitted during the telehealth service. Both live, real-time, and stored clinical data may be included during the telehealth service.

§121.78. Technology and Equipment Requirements.

(a) A provider shall only utilize telecommunications technology if:

(1) the provider is competent to use the telecommunications technology as part of the provider's telehealth services;

(2) the telecommunications technology located at the client site and at the provider site are:

(A) appropriate to the telehealth services to be provided and in good working order; and

(B) are of sufficient quality to allow the provider to deliver equivalent service and quality to the client as if those services were provided in person at the same physical location.

(3) the provider is able to see and hear the client and the facilitator, if used, via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions, when providing telehealth services; and

(4) the quality of electronic transmissions shall be adequate to provide an individual client telehealth service.

(b) A provider shall ensure that communications occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of a transmission itself for purposes of and to protect the transmission.

§121.79. License Holder Responsibilities for Providing Telehealth Services and Using Telehealth.

(a) Applicability.

(1) Except where noted, this subchapter applies to behavior analysts and assistant behavior analysts, as authorized under this subchapter.

(2) Except to the extent it imposes additional or more stringent requirements, this subchapter does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

(b) Licensure and Scope of Practice.

(1) An individual shall not provide telehealth services to a client in the State of Texas, unless the individual is licensed by the department and qualifies as a provider as that term is defined in this subchapter or is otherwise legally authorized to do so.

(2) A provider may provide only those telehealth services that are within the course and scope of the provider's license and competence and delivered in accordance with the requirements of that license and pursuant to the terms and conditions set forth in this chapter.

(3) A provider may engage in direct observation, direct supervision, or indirect supervision in-person and on-site, through telehealth, or in another manner approved by the provider's certifying entity. Supervision provided through telehealth must meet the standards of the certifying entity.

(c) Competence and Standard of Practice; Code of Ethics.

(1) A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

(2) A provider shall comply with the code of ethics and scope of practice requirements in this chapter when providing telehealth services.

(3) The scope, nature, and quality of the services provided via telehealth shall be the same as the services provided during in-person sessions.

(4) A provider shall determine whether a particular service or procedure is appropriate to be provided via telehealth. A provider shall maintain a focus on evidence-based practice and identify appropriate meaningful outcomes for a client. When an established telehealth procedure is not available, the provider shall notify the client or multi-disciplinary team, as appropriate, that the effectiveness of the procedure has not yet been established for the method, manner, or mode of treatment.

(5) Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider through telehealth and the assistive tasks of the facilitator, if used.

(6) A provider shall:

(A) consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth;

(B) be aware of the client's level of comfort with the technology being used as part of the telehealth services; and

(C) be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of a client when providing services through telehealth.

§121.80. Use of Facilitators with Telehealth.

(a) Subject to the requirements and limitations of this subchapter, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(b) A provider shall document whether a facilitator is used in providing telehealth services. If a facilitator is used, the provider shall document the tasks in which the facilitator provided assistance.

(c) Before allowing a facilitator to assist the provider in providing telehealth services, the provider shall ascertain and document the facilitator's qualifications, training, and competence, as appropriate and reasonable, in:

(1) each task the provider directs the facilitator to perform at the client site; and

(2) the methodology and equipment the facilitator is to use at the client site.

(d) A facilitator may only perform the following tasks at a client site:

(1) a task for which a facilitator holds and acts in accordance with any relevant license, permit, or authorization required or exemption available under the Texas Occupations Code to perform the task; and

(2) those physical, administrative, and other tasks for which a telehealth provider determines a facilitator is competent to perform in connection with the rendering of behavior analysis services for which no license, permit, or authorization under the Texas Occupations Code is required or to which an exemption applies.

§121.81. Client Contacts and Communications.

(a) A telehealth provider shall notify a client, the guardian, the caregiver, or multi-disciplinary team, as appropriate, of the conditions of telehealth services, including, but not limited to, the right to refuse telehealth services, options for service delivery, differences between in-person and remote service delivery methods, and instructions for filing and resolving complaints.

(b) A telehealth provider shall obtain client consent before services may be provided through telehealth. If a client previously consented to in-person services, a telehealth provider shall obtain updated consent to include telehealth services.

(c) The initial contact between a provider and client may be at the same physical location or through telehealth, as determined appropriate by the provider.

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



SUBCHAPTER F. FEES

16 TAC §121.85

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 506, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.85. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Licensing fees are as follows:

(1) application and initial license, behavior analyst--\$165

(2) application and initial license, assistant behavior analyst--\$110

(3) renewal, behavior analyst--\$165

(4) renewal, assistant behavior analyst--\$110

(5) change, active status to inactive status--\$0

(6) change, inactive status to active status--\$25

(7) renewal of license on inactive status--renewal fees as stated in paragraphs (3) and (4)

(8) license duplicate or replacement--\$25

(c) Late renewal fees for licenses issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).

(d) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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

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SUBCHAPTER G. ENFORCEMENT

16 TAC §121.90, §121.95

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 506, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.90. *Basis for Disciplinary Action.*

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

(d) The department may refer or report information to a certifying entity [~~information~~], including complaints, investigations, and violations of Texas law, rules, or orders that are or may be relevant to the qualifications of any person to obtain or maintain a certification.

(e) The commission or the executive director may deny a license, place sanctions on [~~revoke, suspend, probate, reprimand, or otherwise discipline~~] a license, or impose an administrative penalty, when a person through fraud, misrepresentation, concealment of a material fact, or in violation of the certifying entity's requirements, the Act, or this chapter:

(1) - (2) (No change.)

§121.95. *Complaints.*

(a) (No change.)

(b) A license holder shall notify each client or a minor client's parent or authorized representative of the name, mailing address, email address, telephone number, and website of the department for the purpose of directing complaints to the department. A license holder shall display this notification:

(1) - (2) (No change.)

~~[(e) A license holder shall not make any alteration on official documents issued by the department.]~~

(c) [~~(d)~~] The commission has adopted rules in Chapter 100 of this title related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

(d) [~~(e)~~] A qualified person may assist the department in the review and investigation of complaints and is immune from liability related to these activities pursuant to Texas Occupations Code §51.252.

(e) [~~(f)~~] Provisions regarding the confidentiality of complaint and disciplinary information under this chapter are located in Texas Occupations Code §51.254.

(f) [~~(g)~~] The department may disclose a complaint or investigation and all information and materials compiled by the department in connection with the complaint or investigation to a person's certifying entity in accordance with Texas Occupations Code §51.254.

(g) [~~(h)~~] For purposes of this chapter, a health profession is a profession for which the enabling statute is located in Title 3, Texas Occupations Code, or that is determined to be a health profession under other 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.

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General Counsel

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

28 TAC §§1.504, 1.508, 1.509

The Texas Department of Insurance (TDI or the department) proposes to amend 28 TAC §§1.504, 1.508, and 1.509 to establish a new process for license applicants and others to complete the fingerprinting process.

EXPLANATION. The proposal adds language that updates the fingerprinting process procedure in order to restrict access to the Texas Department of Public Safety (DPS) fingerprint code on TDI's website. The DPS fingerprint code can currently be accessed by anyone who visits TDI's website. After this rule is adopted, the DPS fingerprint code will be available only to those who request a fingerprint service code through TDI's new online portal. TDI is updating the fingerprinting process procedure at the request of DPS.

The proposed amendments to the sections are described in the following paragraphs.

Section 1.504. Fingerprint Requirement. The proposal adds language that states for a natural person, agency, or company to be eligible to apply for a license, registration, certification, or association with a regulated agency or company, the applicant must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/agent/fingerprinting-process.html.

There are also nonsubstantive text changes that update statutory citations to remove redundant information and insert titles of referenced provisions; remove redundant information in an internal reference; replace "pursuant to" with "under," "prior to" with "before," "commissioner" with "Commissioner," and "subchapter" with "title"; and correct punctuation.

Section 1.508. Use and Confidentiality of Fingerprints. The proposal includes nonsubstantive text changes that update statutory citations to insert titles of referenced provisions and replace "pursuant to" with "under" and "shall" with "will."

Section 1.509. Fingerprint Format and Complete Application. The proposal adds language that requires individuals having their fingerprints captured by a criminal law enforcement agency to coordinate with the vendor acceptable to DPS to obtain a fingerprint card, including paying any upfront processing fees. The proposal also requires those same individuals to mail the completed card to the vendor acceptable to DPS.

The proposal removes language that allows the department's examination vendor to capture fingerprints. The proposal also removes language that requires (1) certain individuals to pay the department's examination vendor; and (2) individuals having their fingerprints captured by a criminal law enforcement agency to submit to the department payment for all applicable fingerprint processing fees in the amount and in the manner stated on the department's application or biographical submission form, or as otherwise posted by the department if the individual is not using a department form. The proposal also removes language that specifies that fingerprint cards may be obtained by sending a written request to the department's Licensing Division and that criminal history processing time and rejection rates for applications and submissions using paper fingerprint cards may be greater than with electronic fingerprints.

There are also nonsubstantive text changes that replace "shall" with "will" or "must," as appropriate, and delete the words "of time." The word "subchapter" is also replaced with "title."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Randall Evans, deputy commissioner of the Customer Operations Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than those imposed by the statute. Mr. Evans made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amendments.

Mr. Evans does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Evans

expects that administering them will have the public benefit of ensuring that the department's rules are accurate and transparent and that the rules include the updated fingerprinting process requirements as well as updated department contact information and vendor information.

Mr. Evans does not expect that the proposed amendments will impose new economic costs on persons required to comply with them. Any associated costs are due to statute or other current regulatory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal, which explains that associated costs are attributable to statute or other current regulatory requirements and not the proposed amendments, also applies to these small and micro businesses and rural communities. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this rule proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the amendments:

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

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by no later than 5:00 p.m., central time, on February 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by no later than 5:00 p.m., central time, on

February 6, 2023. If a public hearing is held, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes the amendments to §§1.504, 1.508, and 1.509 under Insurance Code §§801.056, 801.155, 981.009, 1305.007, 4001.005, 4056.005, 4101.005, 4102.004, 4151.006, 4152.004, 4153.003, 4201.003, 4202.004(d), and 36.001.

Insurance Code §801.056 provides that the department may deny an application for an authorization if the applicant or a corporate officer of the applicant fails to provide a complete set of fingerprints on request by the department.

Insurance Code §801.155 provides that the department may adopt rules under Chapter 801, Subchapter D prescribing the contents of a petition for issuance or reinstatement of a certificate of authority.

Insurance Code §981.009 provides that the Commissioner may adopt rules to implement Chapter 981 or satisfy requirements under federal law or regulations.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305.

Insurance Code §4001.005 provides that the Commissioner may adopt rules necessary to implement Insurance Code Title 13 and to meet the minimum requirements of federal law, including regulations.

Insurance Code §4056.005 provides that the Commissioner may adopt rules as necessary to implement Chapter 4056, Subchapter A and Subchapter B and to meet the minimum requirements of federal law, including regulations.

Insurance Code §4101.005 provides that the Commissioner may adopt rules necessary to implement Chapter 4101 and to meet the minimum requirements of federal law, including regulations.

Insurance Code §4102.004 specifies that the Commissioner may adopt reasonable and necessary rules to implement Chapter 4102.

Insurance Code §4151.006 specifies that the Commissioner may adopt, in the manner prescribed by Chapter 36, Subchapter A, rules that are fair, reasonable, and appropriate to augment and implement Chapter 4151.

Insurance Code §4152.004 specifies that the Commissioner may adopt reasonable rules as necessary to implement Chapter 4152.

Insurance Code §4153.003 specifies that the Commissioner may adopt rules necessary to carry out Chapter 4153 and to regulate risk managers.

Insurance Code §4201.003 specifies that the Commissioner may adopt rules to implement Chapter 4201.

Insurance Code §4202.004(d) provides that the Commissioner will require that each officer of an applicant and each owner or shareholder of the applicant or, if a purchaser is publicly held, each owner or shareholder described by §4202.004(a)(1), submit a complete and legible set of fingerprints to the department for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The department will conduct a criminal history check of each applicant using information (1) provided under Insurance Code §4202.004; and (2) made available to the department by the Department of Public Safety, the Federal Bureau of

Investigation, and any other criminal justice agency under Government Code Chapter 411.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 1.504, 1.508, and 1.509 implement Insurance Code §§801.0056, 801.155, 981.009, 1305.007, 4001.005, 4056.005, 4101.005, 4102.004, 4151.006, 4152.004, 4153.003, 4201.003, and 4202.004(d).

§1.504. Fingerprint Requirement.

(a) In the manner described in §1.509 of this title [~~subchapter~~] (relating to Fingerprint Format and Complete Application), each individual listed in §1.503 of this title [~~subchapter~~] (relating to Application of Fingerprint Requirement) must, at or near the same time that they submit their biographical information or application for licensure, registration, authorization, certification, or permit, also submit:

- (1) a complete set of the individual's fingerprints;
- (2) full payment for all processing fees charged by the Texas Department of Public Safety and the Federal Bureau of Investigation; and
- (3) all additional identifying information required by the Texas Department of Public Safety and the Federal Bureau of Investigation for processing fingerprints.

(b) An individual listed in §1.503 of this subchapter is exempt from the requirement set forth in subsection (a) of this section if the individual satisfies the requirements [~~of paragraphs (1), (2), (3), (4), (5) or (6)~~] of this subsection.

(1) Except as provided in subsection (d) of this section, the individual is submitting an application or biographical information, and:

(A) previously provided the department a complete, legible fingerprint card or electronic set of fingerprints as part of an earlier submission which was granted or approved; and

(B) maintains that prior license, or licensed entity association, in good standing on the date of the subsequent application.

(2) The individual is licensed, or associated with an entity licensee, under Insurance Code Chapter 981, Subchapter E, concerning Surplus Lines Agents, or Title 13, concerning Regulation of Professionals, [~~Subtitles A - D~~], and is:

(A) renewing an unexpired license or license that has been expired for not more than 90 days; or

(B) applying for a license that has been expired for more than 90 days but not more than one year.

(3) The individual is applying for an original emergency license under [pursuant to] Insurance Code Chapter [Chapters] 4051, concerning Property and Casualty Agents; Chapter 4053, concerning Managing General Agents; or Chapter 4101, concerning Insurance Adjusters. Emergency licensees who later qualify for a permanent license by examination must submit a complete set of fingerprints and payment of all fingerprint processing fees before [prior to] issuance of the permanent license.

(4) The individual, or the entity with which the individual is associated, is renewing an unexpired license, certification, registration, or authorization.

(5) The individual is licensed under Insurance Code Chapter 2651, Subchapter A, concerning Title Insurance Agent's License, or Chapter 2652, concerning Escrow Officers, and is renewing an unexpired license or license that has been expired for not more than 90 days.

(6) The individual is submitting an application under Insurance Code Chapter 2651, Subchapter A, or Chapter 2652 and has previously provided the department a complete, legible fingerprint card or electronic set of fingerprints as part of an earlier Insurance Code Chapter 2651, Subchapter A, or Chapter 2652 submission that was granted or approved; and either:

(A) maintains that prior license in good standing on the date of the current application; or

(B) held a prior Insurance Code Chapter 2651, Subchapter A, or Chapter 2652 license that has not been canceled for more than 60 days and maintained that license in good standing at the time of cancellation.

(c) The Commissioner [~~commissioner~~] may waive the requirement in subsection (a) of this section if the Commissioner [~~commissioner~~] determines that the individual is unable to provide fingerprints due to permanent physical injury or illness. The individual seeking a waiver under this subsection must submit evidence of such a condition to the satisfaction of the Commissioner [~~commissioner~~].

(d) The exemption set forth in subsection (b)(1) of this section is subject to the department's ability to maintain an individual's previously submitted set of fingerprints, and the department may require a complete set of fingerprints and payment of all fingerprint processing fees from an individual notwithstanding the exemption.

(e) This subchapter does not limit the department's statutory authority to require the submission of fingerprints or obtain criminal history information.

(f) For a natural person, agency, or company to be eligible for a license, registration, certification, or association with a regulated agency or company, the natural person, agency, or company must start the application or association process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/agent/fingerprinting-process.html. The requesting agency, company, or natural person must submit information necessary to complete the fingerprint service code request, including:

(1) the agency's name, agency representative's name, agency's email address, and license type the agency is applying for, if applying for association with an agency;

(2) the company's name, company representative's name, and company's email address, if applying for association with a company; and

(3) the natural person's name, state of residence, email address, and license type the natural person is applying for, if applying for a license as a natural person.

§1.508. Use and Confidentiality of Fingerprints.

(a) The department will [shall] submit all fingerprints received under this subchapter to the Texas Department of Public Safety and the Federal Bureau of Investigation to obtain criminal history information on the individual for the purpose of determining the individual's fitness for licensure, authorization, certification, permit, or registration, or control of an entity holding or seeking a license, authorization, certificate, permit, or registration.

(b) The department will [shall] use and maintain all criminal history information obtained under [pursuant to] this subchapter in accordance with state and federal laws, including:

(1) Texas Government Code §411.106, concerning Access to Criminal History Record Information: Texas Department of Insurance;

(2) Texas Government Code §411.084, concerning Use of Criminal History Record Information;

(3) United States Public Law 92-544; and

(4) Code of Federal Regulations 28 CFR 50.12.

§1.509. Fingerprint Format and Complete Application.

(a) Each individual described in §1.503 of this title [subchapter] (relating to Application of Fingerprint Requirement) and who is required to submit fingerprints under §1.504 of this title [subchapter] (relating to Fingerprint Requirement) must [shall] have a complete set of their fingerprints captured by:

(1) an electronic fingerprint vendor acceptable to the Texas Department of Public Safety; or

[(2) the department's examination vendor; or]

(2) [(3)] a criminal law enforcement agency, including a sheriff's office or police department.

(b) Individuals having their fingerprints captured by a vendor acceptable to the Texas Department of Public Safety must [shall] pay, in a manner acceptable to the vendor, all fingerprint capture and processing fees directly to the vendor at the time the fingerprints are captured or at such time as is acceptable to the vendor.

[(c) Individuals having their fingerprints captured by the department's examination vendor shall pay, in a manner acceptable to the vendor, all fingerprint capture and processing fees directly to the vendor at the time the fingerprints are captured or at such time as is acceptable to the vendor.]

(c) [(d)] Individuals having their fingerprints captured by a criminal law enforcement agency must [shall]:

(1) coordinate with the vendor acceptable to the Texas Department of Public Safety to obtain a fingerprint card, including paying any upfront processing fees;

(2) [(4)] pay that agency any associated charges that may apply to the capture of their fingerprints in a manner acceptable to that agency; and

(3) mail the completed card to the vendor acceptable to the Texas Department of Public Safety.

[(2) submit to the department payment for all applicable fingerprint processing fees in the amount and in the manner set forth on the department's application or biographical submission form, or as otherwise posted by the department if the individual is not using a department form.]

[(e) Fingerprint cards may be obtained by sending a written request to the Licensing Division, Mail Code 107-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; by telecopy or facsimile to (512) 475-1819; or by e-mail to LICENSE@tdi.state.tx.us.]

(d) [(f)] All fingerprint impressions must be legible and suitable for use by the Texas Department of Public Safety and Federal Bureau of Investigation.

(e) [(g)] Individuals required to submit fingerprints must [shall] submit them within the time frame indicated on the specific application or biographical submission form. Individuals may request an extension [of time] by contacting the division of the department that will process the application or biographical submission.

(f) [(h)] The application or submission of a person required to submit fingerprints will [shall] not be complete until the department receives the criminal history information. [~~Criminal history processing time and rejection rates for applications and submissions with paper fingerprint cards may be substantially greater than with electronic fingerprints.~~]

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

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Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587



CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

SUBCHAPTER Q. DISCOUNT HEALTH CARE PROGRAM REGISTRATION AND RENEWAL REQUIREMENTS

28 TAC §19.1602

The Texas Department of Insurance proposes to amend 28 TAC §19.1602. These amendments are necessary to update department contact information that appears in the section.

EXPLANATION. The department has moved from its previous location in the William P. Hobby Building at 333 Guadalupe Street in Austin, Texas 78701, to the Barbara Jordan State Office Building at 1601 Congress Avenue in Austin, Texas 78701. Because of this, amendments are necessary to remove address references in §19.1602. The proposal also updates the department's website, phone numbers, and agency division names, and it makes additional nonsubstantive text changes.

The proposed amendments to the section are described in the following paragraph.

Section 19.1602. Registration Requirement. The proposal removes outdated mailing addresses and updates the department's website, fax and phone numbers, and agency division names. There are also nonsubstantive text changes that replace "shall" with "will" or "must," as appropriate; replace "subchapter" and "chapter" with "title," "which" with "that," and "pursuant to" with "under"; and update statutory citations to insert titles of referenced provisions. Multiple unnecessary "the" instances were also removed, "10 percent" was replaced with "10%," "court appointed" was replaced with "court-appointed," and the word "internet" was removed. All such changes were made to follow current department language preferences. In

addition, an amendment to paragraph (2)(H) corrects a citation to the Insurance Code.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Randall Evans, deputy commissioner of the Customer Operations Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than those imposed by statute. Mr. Evans made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amendments.

Mr. Evans does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Evans expects that administering them will have the public benefit of ensuring that contact information, email addresses, fax and phone numbers, and other information in §19.1602 is current and accurate.

Mr. Evans does not expect that the proposed amendments will impose new economic costs on persons required to comply with them. Any associated costs are due to the statute or other existing regulatory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this rule proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the proposed amendments:

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

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit

an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by no later than 5:00 p.m., central time, on February 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by no later than 5:00 p.m., central time, on February 6, 2023. If a public hearing is held, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes the amendments to §19.1602 under Insurance Code §7001.003 and §36.001.

Insurance Code §7001.003 specifies that the Commissioner may adopt rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A, as necessary to implement Chapter 7001.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 19.1602 implements Insurance Code §7001.003.

§19.1602. Registration Requirement.

(a) Registration Requirement. An applicant for registration to offer a discount health care program in this state is required to submit all of the following to the department:

(1) the initial registration fee of \$1,000 as provided in ~~the~~ Insurance Code §7001.006, concerning Fees, and §19.802 of this title ~~chapter~~ (relating to Amount of Fees) that is nonrefundable and non-transferable;

(2) a complete application for registration that ~~which~~ contains all the information required by ~~the~~ Insurance Code §7001.005, concerning Application for Registration and Renewal of Registration, and this section, including:

(A) the applicant's full legal name and federal employer identification number or social security number; daytime telephone number with extension; toll free telephone number; ~~internet~~ website address; physical address, including city, state, and ZIP code; mailing address, including the city, state, and ZIP code; a contact person's name, including the title, telephone number, and email address; the applicant's agent for service of process, including the physical address, city, state, and ZIP code;

(B) identification of whether the applicant is a corporation, association, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other legal entity;

(C) any and all assumed names to be used by the applicant in operating a discount health care program. If a filing is required under the Assumed Business or Professional Name Act under ~~pursuant to~~ the Texas Business and Commerce Code, or any similar statute, the

discount health care program operator applicant for registration must ~~shall~~ provide the department with a copy of the assumed name certificate reflecting the registration of each assumed name used by the discount health care program operator applicant;

(D) a statement generally describing the applicant, its facilities, personnel, and the health care services or products for which a discount will be made available under its discount health care programs;

(E) a copy of the form of all contracts made or to be made between the applicant and any providers or provider networks regarding the provision of health care services or products to members;

(F) a copy of the applicant's charter, certificate of authority, or registration obtained from the Texas Secretary of State's office;

(G) if the applicant is an entity subject to the bank or farm credit administration, a copy of the documentation issued by a federal or Texas state agency authorizing the entity to do business in Texas;

(H) an original surety bond payable to the department for the use and benefit of members in the principal amount of \$50,000, as required by ~~the~~ Insurance Code §562.103(f)(1), concerning Program Operator Duties, ~~§562.1034(f)(1)~~ and §19.1603 of this title ~~subchapter~~ (relating to Financial Responsibility Requirement), except that an insurer that holds a certificate of authority under ~~the~~ Texas Insurance Code Title 6, concerning Organization of Insurers and Related Entities, is not required to maintain the surety bond;

(I) lists of marketers, both entities and individuals, separated as follows:

(i) a list of the marketers, both entities and individuals, authorized to sell or distribute the program operator's programs under the program operator's name; and

(ii) a list of the marketers, both entities and individuals, authorized to private label the program operator's programs;

(J) a certification in writing to the department that its programs comply with the requirements of ~~the~~ Insurance Code Chapter ~~Chapters~~ 7001, concerning Registration of Discount Health Care Program Operators, and Chapter 562, concerning Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Regarding Discount Health Care Programs;

(K) a list of names, addresses, official positions, and biographical information of:

(i) the individuals responsible for conducting the applicant's affairs;

(ii) each member of the board of directors, board of trustees, executive committee, or other governing board or committee;

(iii) the officers;

(iv) any contracted management company personnel; and

(v) any person owning or having the right to acquire 10% ~~10 percent~~ or more of the voting securities of the applicant;

(L) a complete biographical certificate concerning each individual whose biographical information is required under ~~the~~ Insurance Code §7001.005(a)(2) and this section, including:

(i) the identification of the individual's relationship to the applicant;

(ii) the name of the applicant;

(iii) the full name;^[] title;^[] social security number;^[] date of birth;^[] mailing address, including the city, state, and ZIP code; telephone number;^[] fax number;^[] and email address of the individual;

(iv) excluding traffic violations and a first DWI offense, a response to the following questions:

(I) whether the individual has any pending misdemeanor or felony charges by indictment, information,² or any other instrument filed in Texas or in any other state or by the federal government;

(II) whether the individual has ever been convicted of any misdemeanor or felony offense in Texas, in any other state, or by the federal government;

(III) whether the individual has ever had deferred adjudication on any misdemeanor or felony charge or offense in Texas, in any other state, or by the federal government; and

(IV) whether the person has ever served any period of probation for any misdemeanor or felony offense in Texas, in any other state, or by the federal government;

(v) if the response is positive to any question under clause (iv)(I) - (IV) of this subparagraph, the applicant for registration as a discount health care program operator is required to provide to the department original certified copies of the charging document, indictment, information, or any other charging document, any judgment of conviction, deferred adjudication order, or probation order, and any order terminating probation, community supervision certificate, or parole certificate for each offense. If the court does not maintain the record, the submission of a letter on the court's letterhead will be required. If the arrest did not result in a prosecution, the submission of a records search from the appropriate jurisdiction indicating a final disposition will be required. A statement describing the circumstances leading to the offense and the individual's age at the time of the offense will be required. Letters of recommendation from any person aware of a particular criminal history may be provided;

(vi) a response to the question whether the individual whose biographical information is required under [the] Insurance Code §7001.005(a)(2) and this section, or any entity in which the individual served as a director, officer, shareholder, manager, member,² or partner, has ever been the subject of an administrative or legal action filed by the department, or any other insurance department, financial regulatory agency, or of an action filed on behalf of the State of Texas or any other state or by the federal government based on alleged violations of state or federal insurance, securities,² or financial regulatory laws that the individual has not previously reported to the department. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the department a description of the circumstances regarding the administrative or legal action and a copy of any document sent to the individual to commence the administrative or legal action that described the nature of the action;

(vii) a response to the question whether the individual, whose biographical information is required under [the] Insurance Code §7001.005(a)(2) and this section, is indebted to any discount health care program operator, policyholder, insurance or reinsurance company, insurance agency, general agent, managing general agency, premium finance company or court-appointed [court appointed] liquidator for membership refunds, premiums collected,² or commissions retained, or have any claims or judgments filed against the individual for membership refunds, retaining premiums,² or commissions. If the

response is positive, the applicant for registration as a discount health care program operator is required to provide to the department a description of the circumstances regarding the indebtedness, including the name and contact information of the person or entity to whom the individual is indebted;

(viii) a response to the question whether the individual whose biographical information is required under [the] Insurance Code §7001.005(a)(2) and this section^[] has ever had a discount health care program contract cancelled for cause, such as for misrepresentation or misappropriation. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the department a description of the circumstances regarding the cancellation including the name and contact information of the individual or entity that cancelled the contract;

(ix) a copy of a fingerprint receipt from the state authorized fingerprint collection vendor for each individual that uses the electronic fingerprint process;

(x) an acknowledgment from each individual whose biographical information is required under [the] Insurance Code §7001.005(a)(2) and this section^[] that the fingerprints provided will be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation; and^[]

(xi) compliance with the requirements of Chapter 1, Subchapter D, of this title (relating to Effect of Criminal Conduct) relating to fingerprint requirements for a criminal background check under [the] Insurance Code §7001.008, concerning Criminal Background Check.

(b) Registration Application Forms. The discount health care program operator registration application forms are available at www.tdi.texas.gov/forms/form11dhcpo.html [<http://www.tdi.state.tx.us>] and at the Agent and Adjuster Licensing Office of the Texas Department of Insurance's mailing address. [Texas Department of Insurance, Licensing Division, 333 Guadalupe, Austin, Texas 78701.]

(c) Submission of Registration Application Forms. The following paragraphs apply to the submission of discount health care program operator registration application forms.

(1) Except for the list of marketers required under [the] Insurance Code §7001.005(a)(4) and this section, a discount health care program operator must [shall] submit the registration application forms by:

(A) mail, to the Texas Department of Insurance, Agent and Adjuster Licensing Office's mailing address [Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104];

(B) fax, to (512) 676-6500 [(512) 490-1052];

(C) email to TDI-DiscountHealth@tdi.texas.gov; [e-mail, to TDI-DiscountHealth@tdi.state.tx.us; or]

(D) in other formats that are acceptable to the department including an electronic format; or [-]

(E) more current mailing addresses, email addresses, and telephone numbers for the Agent and Adjuster Licensing Office of the Texas Department of Insurance as made available on the department's website.

(2) A discount health care program operator must [shall] submit the list of the marketers in the format found on the department's website via email to TDI-DiscountHealth@tdi.texas.gov [TDI-DiscountHealth@tdi.state.tx.us].

(3) Assistance with applying for registration as a discount health care program operator is available at the department's Agent and Adjuster Licensing Office [~~Division~~] Customer Service phone line at (512) 676-6500 [(512) 322-3503], email address at license@tdi.texas.gov, [License@tdi.state.tx.us] and the department's website. [~~web site at www.tdi.state.tx.us.~~]

(d) The registration is valid for one year from the date issued by the department and is required to be renewed annually.

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 December 21, 2022.

TRD-202205162

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 5, 2023

For further information, please call: (512) 676-6587



CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance proposes to amend 28 TAC §§34.514, 34.613, 34.713, and 34.811 by adding language that states that for a natural person to be eligible to register for specific licenses and permits, the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website.

EXPLANATION. The proposal adds language that updates the fingerprinting process procedure in order to restrict access to the Texas Department of Public Safety (DPS) fingerprint code on TDI's website. The DPS fingerprint code can currently be accessed by anyone who visits TDI's website. After this rule is adopted, the DPS fingerprint code will be available only to those who request a fingerprint service code through TDI's new online portal. TDI is updating the fingerprinting process procedure at the request of DPS.

The proposed amendments to the sections are described in the following paragraphs, organized by subchapter.

SUBCHAPTER E. FIRE EXTINGUISHER RULES.

Section 34.514. Applications. The proposal adds language that states that for a natural person to be eligible for a Type A, K, or PL license, the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html. The proposal also adds similar language for an apprentice permit: the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website. In addition, an amendment to subsection (b)(2) corrects a citation to §34.511, and the proposal updates statutory citations to insert titles of referenced provisions.

SUBCHAPTER F. FIRE ALARM RULES.

Section 34.613. Applications. The proposal adds language that states that for a natural person to be eligible for any fire alarm license, the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html. The proposal also deletes an unnecessary use of the word "the" and changes "25 percent" to "25%" for consistency with current agency style, and it updates a statutory citation to insert the title of the referenced provision. The proposal also replaces "the Fire Alarm Rules" with "this subchapter" for consistency with the current agency style for referencing rules.

SUBCHAPTER G. FIRE SPRINKLER RULES.

Section 34.713. Applications. The proposal adds language that states that for a natural person to be eligible for a responsible managing employee license, the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html. The proposal also changes "70 percent" to "70%" for consistency with current agency style, and it updates statutory citations by revising one to follow current agency style and by inserting titles of referenced provisions for others.

SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS.

Section 34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License. The proposal adds language that states that for a natural person to be eligible for a pyrotechnic operator license, pyrotechnic special effects operator license, or flame effects operator license, the natural person must start the application process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html. The proposal also changes "70 percent" to "70%" and "twelve-month" to "12-month" for consistency with current agency style.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Orlando Hernandez, state fire marshal of the State Fire Marshal's Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than those imposed by the statute. Mr. Hernandez made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amendments.

Mr. Hernandez does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Hernandez expects that administering them will have the public benefit of ensuring that the department's rules are accurate and include the updated fingerprinting process requirements.

Mr. Hernandez does not expect that the proposed amendments will impose new economic costs on persons required to comply with them. Any associated costs are due to statute or other current regulatory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal, which explains that associated costs are attributable to statute or other current regulatory requirements and not the proposed rule, also applies to these small and micro businesses and rural communities. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this rule proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the amendments:

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

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by no later than 5:00 p.m., central time, on February 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by no later than 5:00 p.m., central time, on February 6, 2023. If a public hearing is held, the department will consider written and oral comments presented at the hearing.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §34.514

STATUTORY AUTHORITY. The department proposes the amendments to §34.514 under Insurance Code §§6001.051(b), 6001.052(b) and (c), and 36.001.

Insurance Code §6001.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6001 through the state fire marshal.

Insurance Code §6001.052(b) specifies that the Commissioner will adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding (1) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (2) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (3) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the Commissioner by rule will prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under Chapter 6001.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.514 implements Insurance Code §§6001.051(b) and 6001.052(b) and (c).
§34.514. Applications.

(a) Certificates of registration.

(1) Applications for certificates and branch office certificates must be submitted on forms provided by the state fire marshal and accompanied by all other information required by Insurance Code Chapter 6001, concerning Fire Extinguisher Service and Installation, and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation, or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code^[§] Chapter 71. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6001 and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax certificate from the State Comptroller's Office showing it is in active status.

(4) Applications for Type C certificates must be accompanied by a copy of the U.S. DOT letter registering the applicant's facility and that issues a registration number to the facility.

(5) The applicant must comply with the following requirements concerning liability insurance.

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files a proof of

liability insurance with the State Fire Marshal's Office. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office the certificate of insurance as required.

(C) Evidence of public liability insurance, as required by Insurance Code §6001.154, concerning Required Insurance Coverage for Registration Certificate, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state.

(D) If a certificate of registration is to be issued in the name of a corporation, the corporate name must be used on the applicable insurance forms. If the corporation is obtaining a certificate of registration in an assumed name, the insurance must be issued to the corporation doing business as (dba) the assumed name. Example: XYZ Corporation, dba XXX Extinguisher Service.

(E) Insurance issued for a partnership must be issued to the name of the partnership or to the names of all the individual partners.

(F) Insurance for a proprietorship must be issued to the individual owner. If an assumed name is used, the insurance must be issued to the individual doing business as "dba" followed by the assumed name. Example: William Jones, dba XXX Extinguisher Service.

(b) Fire extinguisher licenses.

(1) Original applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal and accompanied by a criminal history report from the Texas Department of Public Safety and all other information required by Insurance Code Chapter 6001 and this subchapter.

(2) For a natural person to be eligible for a Type A, K, or PL license, the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html. The requesting natural person must submit information necessary to complete the fingerprint service code request, including: the natural person's name, natural person's state of residence, natural person's email address, and license type the natural person is applying for.

(3) [(2)] Applications for Type A and Type K licenses must be accompanied by a written statement from the certificate holder (employer) certifying that the applicant meets the minimum requirements of §34.511(e)(4) [§34.511(f)(4)] of this title (relating to Fire Extinguisher Licenses) and is competent to install or service fixed systems.

(4) [(3)] Applications for Type PL licenses must be accompanied by one of the following documents to evidence technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of the National Institute for Certification in Engineering Technologies (NICET) notification letter regarding the applicant's successful completion of examination requirements for certification at Level III for Special Hazard Systems Layout or Special Hazard Suppression Systems.

(5) [(4)] All applications must indicate if the individual is an employee or agent of the registered firm.

(A) If the individual is an employee of the registered firm, the State Fire Marshal's Office may request from the registered firm verification of employment of the individual.

(B) If the individual is an agent of the fire extinguisher firm, the State Fire Marshal's Office may request that the firm provide a letter or other document acceptable to the State Fire Marshal's Office, issued by the firm's insurance company, verifying the policy number and that the acts of the individual are covered by the same insurance policy required by this subchapter to obtain the firm's registration. If required, the verifying document must be submitted to the State Fire Marshal's Office before a license will be issued or when there is a change in the licensee's registered firm. Unless otherwise required by the State Fire Marshal's Office, renewal of a license does not require insurance verification unless there has been a change in the insurance carrier.

(c) Complete application required for renewal. Renewal applications for certificates of registration and licenses must be submitted on forms provided by the state fire marshal and accompanied by a criminal history report obtained through the Texas Department of Public Safety and by all other information required by Insurance Code Chapter 6001 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(d) Timely filed. A license or registration expires at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant will have 30 days from the time the applicant is notified by the State Fire Marshal's Office of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(e) Requirements for applicants holding licenses from other states. An applicant holding a valid license in another state who desires to obtain a Texas license through reciprocity must submit the following documentation with the application in addition to all other information required by Insurance Code Chapter 6001 and this subchapter:

(1) a letter of certification from the licensing entity of another state certifying the applicant holds a valid license in that state; and

(2) additional information from the state detailing material content of any required examination used to qualify for license, including NFPA or other standards, if applicable.

(f) Apprentice permits. Each person employed as an apprentice by a firm engaged in the business must make application for a permit on a form provided by the state fire marshal, accompanied by a criminal history report from the Texas Department of Public Safety, and accompanied by the required application fee.

(1) For a natural person to be eligible for an apprentice permit, the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html, as specified in paragraph (2) of this subsection.

(2) The requesting natural person must submit information necessary to complete the fingerprint service code request, including: the natural person's name, natural person's state of residence, natural person's email address, and license type the natural person is applying for.

(g) Complete applications. The application form for a license or registration must be accompanied by the required application fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6001 and this subchapter, or a new application must be submitted, including all applicable fees.

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 December 21, 2022.

TRD-202205163

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 5, 2023

For further information, please call: (512) 676-6587



SUBCHAPTER F. FIRE ALARM RULES

28 TAC §34.613

STATUTORY AUTHORITY. The department proposes amendments to §34.613 under Insurance Code §§6002.051(b), 6002.052(b), and 36.001.

Insurance Code §6002.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6002 through the state fire marshal.

Insurance Code §6002.052(b) specifies that, under rules adopted under Texas Insurance Code §6002.051, the department may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems. The rules must establish appropriate training and qualification standards for each kind of license and certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.613 implements Insurance Code §§6002.051 and 6002.052.

§34.613. Applications.

(a) Approvals and certificates of registration.

(1) Applications for approvals, certificates, and branch office certificates must be submitted on the forms adopted by reference in §34.630 of this title (relating to Application and Renewal Forms) and be accompanied by all fees, documents, and information required by Insurance Code Chapter 6002, concerning Fire Detection and Alarm Device Installation, and this subchapter. An application will not be deemed complete until all required forms, fees, and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code Chapter

71. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6002 and this subchapter.

(3) For corporations, the application must also include the name of each shareholder owning more than 25% [25 percent] of the shares issued by the corporation; the corporate taxpayer identification number; the charter number; a copy of the corporate charter of a Texas corporation or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business; and a copy of the corporation's current franchise tax certificate from the State Comptroller's Office showing it is in active status.

(4) A registered firm must employ at least one full-time licensed individual at each location of a main or branch office.

(5) Insurance is required as follows:

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files with the State Fire Marshal's Office evidence of an acceptable general liability insurance policy.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office a certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, if applicable.

(6) A firm billing a customer for monitoring is engaged in the business of monitoring and must comply with the insurance requirements of this subchapter for a monitoring firm.

(7) Applicants for a certificate of registration who engage in monitoring must provide the specific business locations where monitoring will take place and the name and license number of the fire alarm licensees at each business location. A fire alarm licensee may not serve in this capacity for a registered firm other than the firm applying for a certificate of registration. In addition, the applicants must provide evidence of listing or certification as a central station by a testing laboratory approved by the Commissioner and a statement that the monitoring service complies with NFPA 72, as adopted in §34.607 of this title (relating to Adopted Standards).

(8) Applicants for a certificate of registration--single station must provide a statement, signed by the sole proprietor, a partner of a partnership, or by an officer of the corporation, indicating that the firm exclusively engages in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining single station devices.

(b) Fire alarm licenses.

(1) To be complete, applications for a license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by Insurance Code Chapter 6002 and this subchapter. Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All applicants for any type of license must successfully complete a qualifying test as required in Insurance Code Chapter 6002 and this subchapter [the Fire Alarm Rules] as designated by the State Fire Marshal's Office. The qualifying test, given as part of the training for residential fire alarm technician license, must include questions regarding Insur-

ance Code Chapter 6002 and this subchapter. [the Fire Alarm Rules.] For a natural person to be eligible for any fire alarm license, the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html. The requesting natural person must submit information necessary to complete the fingerprint service code request, including the natural person's name, natural person's state of residence, natural person's email address, and license type the natural person is applying for.

(2) Applicants for fire alarm technician licenses must:

(A) furnish notification from the National Institute for Certification in Engineering Technologies (NICET) or the Electronic Security Association (ESA), confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(3) Applicants for a fire alarm monitoring technician license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office, or provide evidence of current registration in Texas as a registered engineer.

(4) Applicants for a residential fire alarm superintendent (single station) license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(5) Applicants for a residential fire alarm superintendent license must:

(A) furnish notification from NICET or ESA confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(6) Applications for a fire alarm planning superintendent license must be accompanied by one of the following documents as evidence of technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's or ESA's notification letter confirming the applicant's successful completion of the test requirements for NICET or ESA certification at Level III for fire alarm systems.

(7) An applicant for a residential fire alarm technician license must provide evidence of the applicant's successful completion of the required residential fire alarm technician training course from a training school approved by the State Fire Marshal's Office.

(c) Instructor and training school approvals.

(1) Instructor approvals. An applicant for approval as an instructor must:

(A) hold a current fire alarm planning superintendent license, residential fire alarm superintendent license, or fire alarm technician license issued by the State Fire Marshal's Office;

(B) submit a completed Instructor Approval Application, Form No. SF247, signed by the applicant, that is accompanied by all fees; and

(C) furnish written documentation of a minimum of three years of experience in fire alarm installation, service, or monitoring of fire alarm systems unless the applicant has held a fire alarm planning superintendent license, residential fire alarm superintendent license, or fire alarm technician license for three or more years.

(2) Training school approvals.

(A) An applicant for approval of a training school must submit a completed Training School Approval Application, Form No. SF 246, to the State Fire Marshal's Office. To be complete, the application must be:

(i) signed by the applicant, the sole proprietor, by each partner of a partnership, or by an officer of a corporation or organization as applicable;

(ii) accompanied by a detailed outline of the proposed subjects to be taught at the training school and the number and location of all training courses to be held within one year following approval of the application; and

(iii) accompanied by all required fees.

(B) After review of the application for approval for a training school, the state fire marshal will approve or deny the application within 60 days following receipt of the materials. A letter of denial will state the specific reasons for the denial. An applicant that is denied approval may reapply at any time by submitting a completed application that includes the changes necessary to address the specific reasons for denial.

(d) Renewal applications.

(1) In order to be complete, renewal applications for certificates, licenses, instructor approvals, and training school approvals must be submitted on the forms adopted by reference in §34.630 of this title and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by [the] Insurance Code Chapter 6002 and this subchapter. A complete renewal application deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a postmark date that is before the expiration of the certificate or license being renewed.

(2) A licensee with an unexpired license who is not employed by a registered firm at the time of the licensee's renewal may renew that license, but the licensee may not engage in any activity for which the license was granted until the licensee is employed and qualified by a registered firm.

(e) Complete applications. The application form for a license, registration, instructor approval, and training school approval must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6002 and this subchapter, or a new application must be submitted including all applicable fees.

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 December 21, 2022.

TRD-202205164



SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §34.713

STATUTORY AUTHORITY. TDI proposes amendments to §34.713 under Insurance Code §§6003.051(b), 6003.052(b), and 36.001.

Insurance Code §6003.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6003 through the state fire marshal.

Insurance Code §6003.052(b) specifies that, under rules adopted under Texas Insurance Code §6003.051(b), the department may create a specialized licensing or registration program for fire protection sprinkler system contractors.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.713 implements Insurance Code §§6003.051 and 6003.052.

§34.713. Applications.

(a) Certificates of registration.

(1) Applications for certificates must be submitted on forms provided by the state fire marshal and must be accompanied by all other information required by Insurance Code Chapter 6003, concerning Fire Protection Sprinkler System Service and Installation, and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with Business and Commerce Code Chapter 71, concerning Assumed Business or Professional Name [Aet]. The application must also include written authorization by the applicant that permits the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business so the state fire marshal can determine whether the applicant is in compliance with the provisions of Insurance Code Chapter 6003 and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax certificate from the State Comptroller's Office that shows the corporation is in active status.

(4) An applicant must not designate as its full-time responsible managing employee (RME) a person who is the designated full-time RME of another registered firm.

(5) A registered firm must not conduct any business as a fire protection sprinkler contractor until a full-time RME, as applicable to

the business conducted, is employed. An individual with an RME-General Inspector's license does not constitute compliance with the requirements of this subsection.

(6) A certificate of registration may not be renewed unless the firm has at least one licensed RME as a full-time employee before the expiration of the certificate of registration to be renewed. If an applicant for renewal does not have an RME as a full-time employee as a result of death or disassociation of an RME within 30 days preceding the expiration of the certificate of registration, the renewal applicant must inform the license section of the State Fire Marshal's Office of the employment of a full-time RME before the certificate of registration will be renewed.

(7) Insurance required.

(A) The state fire marshal must not issue a certificate of registration under this subchapter unless the applicant files with the state fire marshal's office a proof of liability insurance. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office the certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, as applicable. Failure to do so will be cause for administrative action.

(C) Evidence of public liability insurance, as required by Insurance Code §6003.152, concerning Required Insurance Coverage for Registration Certificate, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state, or a certificate of insurance for surplus lines coverage, secured in compliance with Insurance Code Chapter 981, concerning Surplus Lines Insurance, as contemplated by Insurance Code §6003.152(c).

(b) Responsible managing employee licenses.

(1) Original and renewal applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal, along with a criminal history report from the Texas Department of Public Safety and accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter. For a natural person to be eligible for a responsible managing employee license, the natural person must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html. The requesting natural person must submit information necessary to complete the fingerprint service code request, including the natural person's name, natural person's state of residence, natural person's email address, and license type the natural person is applying for.

(2) The following documents must accompany the application as evidence of technical qualifications for a license:

(A) RME-General:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the NICET notification letter confirming the applicant's successful completion of the test requirements for certification at Level III for water-based fire protection systems layout.

(B) RME-Dwelling:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the NICET notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of current employment by a registered fire sprinkler contractor.

(C) RME-Underground Fire Main:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the notification letter confirming at least a 70% [70 percent] grade on the test covering underground fire mains for fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service.

(D) RME-General Inspector:

(i) a copy of the NICET notification letter confirming the applicant's successful completion of the examination requirements for certification at Level II for Inspection and Testing of Water-Based Systems; and

(ii) evidence of current employment by a registered fire protection sprinkler system contractor.

(c) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter, or a new application must be submitted including all applicable fees.

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 December 21, 2022.

TRD-202205165

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 5, 2023

For further information, please call: (512) 676-6587



SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §34.811

STATUTORY AUTHORITY. The department proposes amendments to §34.811 under Occupations Code §2154.051 and §2154.052 and Insurance Code §36.001.

Occupations Code §2154.051 authorizes the Commissioner to determine reasonable criteria and qualifications for licenses.

Occupations Code §2154.052 provides that the Commissioner may issue rules to administer Chapter 2154; that the Commissioner will adopt and the State Fire Marshal will administer rules the Commissioner considers necessary for the protection, safety, and preservation of life and property; and that the Commissioner will adopt rules for applications for licenses.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.811 implements Occupations Code §2154.051 and §2154.052.

§34.811. *Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.*

(a) Applicants for a pyrotechnic operator license, pyrotechnic special effects operator license, or flame effects operator license must take a written test and obtain at least a passing grade of 70% [70 percent]. Written tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, frequency, and location of the tests must be designated by the state fire marshal.

(b) Examinees who fail may file a retest application, accompanied by the required fee.

(c) An applicant may only schedule each type of test three times within a 12-month [twelve-month] period.

(d) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license; otherwise, the test is voided and the individual will have to pass the test again.

(e) The state fire marshal may waive a test requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(f) A licensee whose license has been expired for two years or longer and makes application for a new license must pass another test.

(g) A pyrotechnic operator license will not be issued to any person who fails to meet the requirements of subsection (a) of this section and the following:

(1) assisted in conducting at least five permitted or licensed public displays in Texas under the direct supervision of and verified in writing by a pyrotechnic operator licensed in Texas;

(2) be at least 21 years of age.

(h) The application must be accompanied by a criminal history report from the Texas Department of Public Safety. For a natural person to be eligible for a pyrotechnic operator license, pyrotechnic special effects operator license, or flame effects operator license, the natural person must start the application process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/fire/fingerprinting-process.html. The requesting natural person must submit information necessary to complete the fingerprint service code request, including the natural person's name, natural person's state of residence, natural person's email address, and license type the natural person is applying for.

(i) A licensee must be able to show proof of licensure while engaged in the activities of the business.

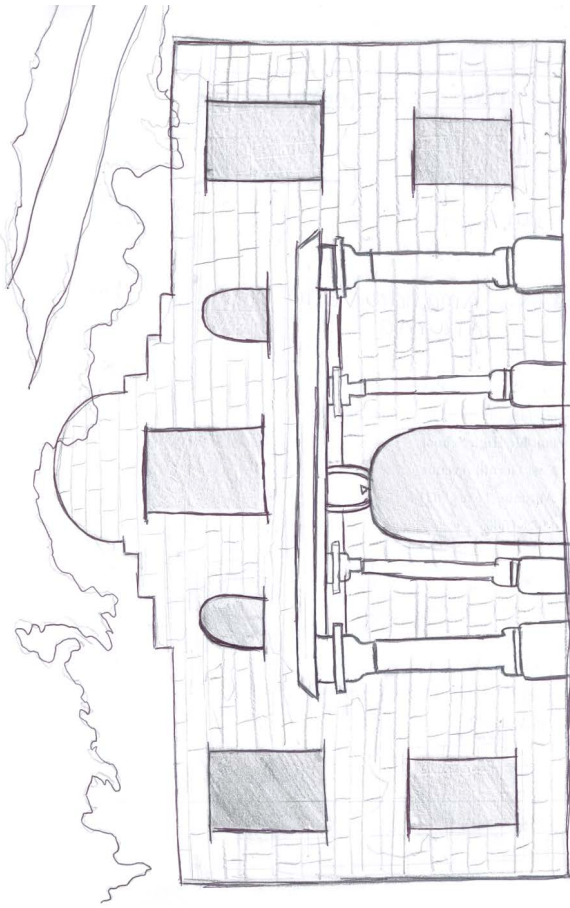
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-202205166

Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: February 5, 2023
For further information, please call: (512) 676-6587





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8212, §355.8214

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care, and §355.8214, concerning Waiver Payments to Physician Group Practices for Uncompensated Charity Care.

The amendments to §355.8212 and §355.8214 are adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5539). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The Uncompensated Care (UC) payments are made by HHSC to qualifying providers that serve a large number of Medicaid and uninsured individuals. Attachment H of the 1115 Waiver establishes rules and guidelines for the State to claim federal matching funds for UC payments to hospitals, clinics, and other provider types. The purpose of Texas Physician Uncompensated Care (TXPUC) is to determine the physician professional costs related to services provided to charity care patients by physician organizations that may be reimbursable from the Uncompensated Care pool. The amended rules define and update certain TXPUC provider classes and makes other clarifying amendments.

These amended rules update the definition and the methodology used to allocate funds to physician groups. The prior rules do not define the different classes of physician groups and allocates funds equally. The amended rules add "State-owned" and "Non-State-owned" physician group classes and allow the application of different allocation methodologies to each newly defined class. "State-owned" physician groups will now have a different allocation methodology of funds while the "Non-State-owned" physician groups' methodology remains unchanged. Minor grammatical and formatting edits were made to the rule text.

COMMENTS

The 31-day comment period ended October 17, 2022.

During this period, HHSC received one comment regarding the proposed rules from the University of Texas Health Science Center at Houston. A summary of the comment relating to the amendments and HHSC's response follows.

COMMENT: The commenter was in favor of the amendment to §355.8212 and §355.8214. The comment was expressing support for the rule amendments.

RESPONSE: HHSC appreciates the support for the proposed amendments. No revision was made to the rules in response to these comments.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2022.

TRD-202205159

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 10, 2023

Proposal publication date: September 16, 2022

For further information, please call: (737) 867-7813

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) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter D, §1.81 and §1.91 and new §1.82 and §1.83, concerning private donors and organizations, sick leave pool, family leave pool, and vehicle fleet management. The amendments to §1.81 and §1.91 and new §1.82 and §1.83 are adopted without changes to the proposed text as published in the November 18, 2022 issue of the *Texas Register* (47 TexReg 7617) and will not be republished. The Department identified the need for the amendments and new rules during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of the November 18, 2022, issue of the *Texas Register* (47 TexReg 7753).

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

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

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

The 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.

The Department received no comments regarding the proposed amendments and new rules.

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

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 December 22, 2022.

TRD-202205168

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: January 11, 2023

Proposal publication date: November 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) adopts the repeal of Texas Administrative Code, Title 4, Chapter 29, Subchapter A, Economic Development Program, comprised of §§29.1 - 29.3. The repeal is adopted without changes to the proposed text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7631) and will not be republished.

The Department identified the need for the proposed repeal during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of the November 18, 2022, issue of the *Texas Register* (47 TexReg 7754).

The Department adopts the repeal of Chapter 29, Subchapter A due to a lack of business necessity for the rules. During its rule review of Subchapter A, 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 received no comments on the proposed repeal.

The repeal is adopted 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 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 December 22, 2022.

TRD-202205167

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 936-9360



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER H. COMPLAINT HANDLING

16 TAC §§60.220 - 60.222

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter H, §§60.220 - 60.222, regarding inspection provisions of the Procedural Rules of the Commission and the Department, without changes to the proposed text as pub-

lished in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6733). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The adopted rules provide default procedures for any inspection the Department is authorized to conduct under law and are necessary to implement Texas Occupations Code §51.211. The adopted rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconference technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection. Different or more specific procedures may be provided in individual program rules.

SECTION-BY-SECTION SUMMARY

The adopted rules create new §60.220 within Chapter 60, Subchapter H. Section 60.220 simply states that the Department shall conduct inspections as provided by Occupations Code §51.211 and §51.351, Chapter 60, and the statutes and rules applicable to the agency's regulatory programs.

The adopted rules also create new §60.221 within Chapter 60, Subchapter H. Section 60.221 includes the default procedures to be used for inspections performed by the Department. Notably, all of the provisions included in §60.221 were drawn from existing program rules including the Department's Driver Education and Safety, Barbering, Cosmetologists, Massage Therapy, Orthotists and Prosthetists, Vehicle Towing and Boating, Vehicle Storage Facilities, and Used Automotive Parts Recyclers programs.

Subsection (a) states that §60.221 applies to any inspection the Department is authorized to conduct pursuant to law. Subsection (b) states that the Department may conduct inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint. Subsection (c) states that inspections will be conducted during the normal operating hours of the location being inspected. Subsection (d) requires the Department to provide a license holder, applicant, or representative thereof a written inspection report.

Subsection (e) of adopted new §60.221 provides that when an inspection report requires corrective action on the part of the license holder or applicant, the Department will provide the license holder, applicant, or representative a list of any required corrective actions and a timeline for completing each. Subsection (e) also provides that the license holder or applicant must complete any required corrective actions within the time period

specified by the Department, and that the Department may grant extensions to this time period at its discretion. Subsection (f) states that the Department may assess administrative penalties, administrative sanctions, or both against a license holder or applicant who fails to complete any required corrective actions within this time period.

Subsection (g) of adopted new §60.221 authorizes the Department to use alternative methods, including videoconference or similar technology, to conduct inspections remotely. Lastly, subsection (h) provides that more specific provisions regarding inspections in individual program statutes or rules will prevail over §60.221.

The adopted rules also create new §60.222, entitled "Cooperation with Inspections." Subsection (a) requires a license holder, applicant, or other person to cooperate with an authorized Department inspector during an inspection. Subsection (b) requires a license holder, applicant, or other person to provide a Department inspector with records, notices, or other documents requested by the inspector.

Subsection (c) of adopted new §60.222 prohibits a license holder, applicant, or other person from avoiding, refusing to permit, or failing to cooperate in a Department inspection; interfering with a Department inspection; or threatening or intimidating a Department inspector in connection with an inspection.

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 October 14, 2022, issue of the *Texas Register* (47 TexReg 6733). The public comment period closed on November 28, 2022. The Department received comments from six interested parties on the proposed rules, as well as one comment unrelated to the proposed rules. The public comments are summarized below.

Comment: One commenter asked whether the intent of the proposed rules was to penalize a license holder for interfering with an inspection if they pushed back against an inspector who behaved inappropriately during an inspection.

Department Response: The Department appreciates the question. The Department disagrees with this comment since the proposed rule is in no way intended to punish licensees for alleged inappropriate behavior by a Department inspector. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter requested that the proposed rules be changed to include a provision stating that "Every license holder, applicant, or other person subject to an inspection brought about from a complaint shall be given a copy of the entire unredacted complaint complete with the inspection result and resolution."

Department Response: The Department appreciates the comment. However, the comment is outside the scope of the proposed rules, which deal with the procedures to be followed by the Department in inspecting an establishment, and do not cover the complaint and resolution process. Thus, the Department disagrees with this comment. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked whether the proposed rules applied to General Land Office residential inspectors.

Department Response: The Department appreciates the question. The proposed rules apply only to Department inspectors. The Department disagrees with this comment since the proposed rules apply only to entities subject to inspection by TDLR. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter expressed concern about the Department conducting inspections without advance notice.

Department Response: The Department appreciates the comment. The Department disagrees with this comment because unannounced inspections are a key tool in the Department's ability to regulate establishments and professions. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated that moving to risk-based inspections rather than periodic inspections was ill-advised. The commenter also stated that virtual inspections should not be used to determine the cleanliness of an establishment.

Department Response: The Department appreciates the comment. The Department is required to adopt a risk-based inspection model pursuant to Section 51.211, Occupations Code. Thus, the Department disagrees with this comment. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter contested the Department's finding that the proposed rules would not adversely affect small or micro-businesses.

Department Response: The Department appreciates the comment but stands by its previous analysis. Thus, the Department disagrees with this comment. The Department did not make any changes to the proposed rules in response to this comment.

COMMISSION ACTION

At its meeting on December 6, 2022, the Commission adopted the proposed rules as published in the *Texas Register*.

STATUTORY AUTHORITY

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 455, 605, 2303, 2308, 2309, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter I, §84.100 and §84.101; and the repeal of an existing rule at Subchapter I, §84.102, regarding the Driver Education Safety program, without changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6735). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The adopted rules remove periodic inspections from the Driver Education and Safety program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §84.100(a) to remove periodic inspection requirements and to add language stating that driver education providers (formerly referred to as "driver education schools") will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. The adopted rules also repeal subsections (b) through (d) of § 84.100, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H. In light of the repeal of subsections (b) through (d), current subsection (e) is being changed to (b).

The adopted rules amend §84.101 to change references to "school" to "provider" in subsections (a) and (b), and to repeal subsections (d) through (f), as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

Lastly, the adopted rules repeal §84.102 in its entirety. Section 84.102 requires annual inspections of driver education providers, and repealing this section is necessary to implement §51.211, Occupations Code.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being adopted separately in this issue of the *Texas Register*. Those adopted rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconference technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection.

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 October 14, 2022, issue of the *Texas Register* (47 TexReg 6735). The public comment period closed on November 28, 2022. The Department received comments from one interested party on the proposed rules. The public comment is summarized below.

Comment: One commenter asked the Department to identify the key risk factors to be used in prioritizing inspections.

Department Response: The Department appreciates the comment. Currently, the key risk factors to be used in prioritizing inspections include: (1) whether a license holder has previously violated a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director; (2) the number of violations committed by a license holder; (3) when the license holder's establishment was last inspected; (4) the nature of any violations found in previous inspections; and (5) whether the license holder has made or acknowledged corrections required pursuant to a previous inspection. The Department did not make any changes to the proposed rules in response to this comment.

COMMISSION ACTION

At its meeting on December 6, 2022, the Commission adopted the proposed rules without changes as published in the *Texas Register*.

SUBCHAPTER I. INSPECTIONS

16 TAC §84.100, §84.101

STATUTORY AUTHORITY

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



16 TAC §84.102

STATUTORY AUTHORITY

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 85. VEHICLE STORAGE FACILITIES

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 85, §85.450; and the repeal of existing rules at §85.451 and §85.453, regarding the Vehicle Storage Facilities program, without changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6737). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 85, implement Texas Occupations Chapter 2303, Vehicle Storage Facility Act.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The adopted rules remove periodic inspections from the Vehicle Storage Facility program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §85.450(a) to remove periodic inspection requirements and to add language stating that towing companies will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. Additionally, the last sentence of subsection (a) has been moved into new subsection (b).

The proposed rules also repeal subsections (b) through (d) of § 85.450, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

The proposed rules also repeal §85.451 and §85.453 in their entirety to remove periodic inspection requirements and to remove concepts that will be covered by the inspections rules contained in Chapter 60, Subchapter H. Repealing these sections is necessary to implement §51.211, Occupations Code.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being proposed separately in this issue of the *Texas Register*. Those proposed rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license

holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconferencing technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection

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 October 14, 2022, issue of the *Texas Register* (67 TexReg 6737). The public comment period closed on November 28, 2022. The Department received comments from one interested party on the proposed rules. The public comments are summarized below.

Comment: One commenter stated that in order to retrieve a vehicle from a storage facility, a person should be required to have a current registration, insurance, and driver's license.

Department Response: The Department appreciates the comment. The Department disagrees with the comment because it is outside the scope of the present rulemaking. The Department did not make any changes to the proposed rules as a result of this comment.

COMMISSION ACTION

At its meeting on December 6, 2022, the Commission adopted the proposed rules as published in the *Texas Register*.

16 TAC §85.450

STATUTORY AUTHORITY

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2303.

No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



16 TAC §85.451, §85.453

STATUTORY AUTHORITY

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 2303.

No other statutes, articles, or codes are affected by the adopted repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 86. VEHICLE TOWING AND BOOTING

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 86, §86.450; and adopts the repeal of existing rules at §86.451 and §86.453, regarding the Vehicle Towing and Booting program, without changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6739). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 86, implement Texas Occupations Code, Chapter 2308, Vehicle Towing and Booting.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The adopted rules remove periodic inspections from the Vehicle Towing and Booting program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §86.450(a) to remove periodic inspection requirements and to add language stating that towing companies will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. Additionally, the last sentence of subsection (a) has been moved into new subsection (b).

The adopted rules also repeal subsections (b) through (d) of §86.450, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

The adopted rules also repeal §86.451 and §86.453 in their entirety to remove periodic inspection requirements and to remove concepts that will be covered by the inspections rules contained in Chapter 60, Subchapter H. Repealing these sections is necessary to implement §51.211, Occupations Code.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being adopted separately in this issue of the *Texas Register*. Those adopted rules provide, among

other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconferencing technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection.

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 October 14, 2022, issue of the *Texas Register* (47 TexReg 6739). The public comment period closed on November 28, 2022. The Department received two comments unrelated to the proposed rules.

COMMISSION ACTION

At its meeting on December 6, 2022, the Commission adopted the proposed rules as published in the *Texas Register*.

16 TAC §86.450

STATUTORY AUTHORITY

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman
General Counsel
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For further information, please call: (512) 463-7750



16 TAC §86.451, §86.453

STATUTORY AUTHORITY

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adopted repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman
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CHAPTER 87. USED AUTOMOTIVE PARTS RECYCLERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 87, §87.44; and the repeal of existing rules at §87.45 and §87.47, regarding the Used Automotive Parts Recyclers program, without changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6740). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 87, implement Texas Occupations Code, Chapter 2309, Used Automotive Parts Recyclers program.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The adopted rules remove periodic inspections from the Used Automotive Parts Recyclers program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §87.44 to remove periodic inspection requirements and to add language stating that used automotive parts recycling businesses will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. Additionally, the last sentence of subsection (a) has been moved into new subsection (b).

The adopted rules also repeal subsections (b) through (e) of §87.44, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

The adopted rules also repeal §87.45 and §87.47 in their entirety to remove periodic inspection requirements and to remove concepts that will be covered by the inspections rules contained in Chapter 60, Subchapter H. Repealing these sections is necessary to implement §51.211, Occupations Code.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being adopted separately in this issue of the *Texas Register*. Those adopted rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use

alternative inspection methods, including the use of videoconfer-
ence technology, instead of conducting an in-person inspection;
and (5) a license holder, applicant, or other person must coop-
erate in the performance of an inspection.

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 October 14, 2022, issue of the *Texas Reg-
ister* (47 TexReg 6740). The public comment period closed on
November 28, 2022. The Department received one comment
unrelated to the proposed rules.

COMMISSION ACTION

At its meeting on December 6, 2022, the Commission adopted
the proposed rules as published in the *Texas Register*.

16 TAC §87.44

STATUTORY AUTHORITY

The statutory provisions affected by the adopted rules are those
set forth in Texas Occupations Code, Chapters 51 and 2309.
No other statutes, articles, or codes are affected by the adopted
rules.

The agency certifies that legal counsel has reviewed the adop-
tion and found it to be a valid exercise of the agency's legal au-
thority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



16 TAC §87.45, §87.47

STATUTORY AUTHORITY

The statutory provisions affected by the adopted repeals are
those set forth in Texas Occupations Code, Chapters 51 and
2309. No other statutes, articles, or codes are affected by the
adopted repeals.

The agency certifies that legal counsel has reviewed the adop-
tion and found it to be a valid exercise of the agency's legal au-
thority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §114.29

The Texas Commission of Licensing and Regulation (Commis-
sion) adopts amendments to an existing rule at 16 Texas Ad-
ministrative Code (TAC), Chapter 114, §114.29, regarding the
Orthotists and Prosthetists program, without changes to the pro-
posed text as published in the October 14, 2022, issue of the
Texas Register (47 TexReg 6742). These rules will not be re-
published.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 114, implement Texas Occu-
pations Code, Chapter 605, Orthotists and Prosthetists.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021),
the Sunset legislation for the Department, added new inspection
provisions to Occupations Code, Chapter 51, the Department's
enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560
added new §51.211 to Chapter 51, requiring the department to
conduct risk-based inspections that prioritize inspections based
on key risk factors. HB 1560 also repealed provisions from sev-
eral program statutes that conflicted with this new provision.

The adopted rules remove periodic inspections from the Ortho-
tists and Prosthetists program rules and are necessary to imple-
ment Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §114.29(h) to remove periodic inspec-
tion requirements and to add language stating that facilities will
be inspected in accordance with Chapter 51, Occupations Code,
and new rules governing inspections within 16 TAC, Chapter 60,
Subchapter H. The adopted rules also repeal former subsections
(h)(1) through (h)(6) of §114.29, as that subject matter will be
covered by the inspections rules contained in Chapter 60, Sub-
chapter H.

The adopted rules also change the title of §114.29 to "Accredi-
tation and Inspection of Facilities" (emphasis added).

The new rules regarding inspections under Chapter 60, Sub-
chapter H, are also currently being adopted separately in this is-
sue of the *Texas Register*. Those adopted rules provide, among
other things, that: (1) the department may perform inspections
with or without advance notice to ensure compliance with statute
or rule, or as a result of a complaint; (2) inspections will be per-
formed during the regular operating hours of the location being
inspected; (3) upon completion of an inspection, the license
holder, applicant, or representative will be provided with the re-
sults of the inspection in writing; (4) the department may use
alternative inspection methods, including the use of videoconfer-
ence technology, instead of conducting an in-person inspection;
and (5) a license holder, applicant, or other person must coop-
erate in the performance of an inspection.

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 October 14, 2022, issue of the *Texas Reg-
ister* (47 TexReg 6742). The public comment period closed on
November 28, 2022. The Department did not receive any com-
ments from interested parties on the proposed rules.

COMMISSION ACTION

At its meeting on December 6, 2022, the Commission adopted the proposed rules without changes as published in the *Texas Register*.

STATUTORY AUTHORITY

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the proposed rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



16 TAC §114.50

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 114, §114.50, regarding the Orthotists and Prosthetists program, without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5564). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 114, implement Texas Occupations Code, Chapter 605, Orthotists and Prosthetists.

The adopted rule permits licensed orthotists and prosthetists to claim continuing education (CE) credit for completing the human trafficking prevention training required by Occupations Code, Chapter 116, and the jurisprudence examination required for initial licensure by Department rules. The adopted rule is necessary to expand the categories of CE credit in the existing Continuing Education rule. The changes are a result of recommendations from the Orthotists and Prosthetists Advisory Board workgroup and staff and were recommended by the full advisory board.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §114.50, Continuing Education, by adding two new paragraphs in subsection (i) and making conforming edits to the punctuation of that subsection.

New §114.50(i)(8) adds the human trafficking prevention training required by Occupations Code, Chapter 116, to the list of acceptable sources of CE credit. No more than one hour of CE credit may be claimed by a licensee for completion of the human trafficking prevention training during a CE reporting period.

New §114.50(i)(9) adds completion of the jurisprudence examination to the list of acceptable sources of CE credit. Current Department rules in Chapter 114 do not require completion of the jurisprudence examination after initial licensure. The addition of this new paragraph permits a licensee to complete the

examination for a one-hour CE credit in a CE reporting period even though the examination is not a requirement for renewal of a license.

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 September 16, 2022, issue of the *Texas Register* (47 TexReg 5564). The public comment period closed on October 17, 2022. The Department did not receive any comments from interested parties on the proposed rules.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Orthotists and Prosthetists Advisory Board met on October 24, 2022, to discuss the proposed rules and the public comments received. The Orthotists and Prosthetists Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on December 6, 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 605, 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 605. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 117. MASSAGE THERAPY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 117, Subchapter F, §117.55; and Subchapter G, §117.82, regarding the Massage Therapy program, without changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6744). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 117, implement Texas Occupations Code, Chapter 455.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection

provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The adopted rules remove periodic inspections from the Massage Therapy program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §117.55(a) to remove periodic inspection requirements and to add language stating that massage therapy schools will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H.

The adopted rules repeal §117.55(b) and (d), as the concepts currently contained in those sections are contained in the global inspection provisions within 16 TAC, Chapter 60, Subchapter H. Accordingly, §117.55(c) has been re-designated as §117.55(b). Similarly, §117.55(e) has been re-designated as §117.55(c).

The adopted rules amend §117.82(f) to remove periodic inspection requirements and concepts that are included within the new rules governing inspections within 16 TAC, Chapter 60, Subchapter H.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being adopted separately in this issue of the *Texas Register*. Those adopted rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconference technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection.

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 October 14, 2022, issue of the *Texas Register* (47 TexReg 6744). The public comment period closed on November 28, 2022. The Department received comments from six interested parties to the proposed rules, as well as two comments unrelated to the proposed rules. The public comments are summarized below.

Comment: One commenter asked whether an analysis has been performed to determine the impact the proposed rules will have on human trafficking.

Department Response: The Department appreciates the question. While the Department has not engaged in a formal analysis of the impact of the proposed rules on human trafficking, the Department expects that the risk-based inspection model will be effective in identifying instances of human trafficking. The Department did not make any changes to the proposed rules in response to this comment.

Comment: Five commenters expressed concern that Department inspectors would conduct inspections while a massage was in session, or would attempt to invade the privacy of a client while a massage was taking place.

Department Response: The Department appreciates these comments. The Department disagrees with these comments, however, because Department inspectors are instructed not to enter a room while a client session is in progress. Inspectors will respect the client's privacy in all instances. The Department did not make any changes to the proposed rules in response to this comment.

COMMISSION ACTION

At its meeting on December 6, 2022, the Commission adopted the proposed rules as published in the *Texas Register*.

SUBCHAPTER F. LICENSED MASSAGE SCHOOLS

16 TAC §117.55

STATUTORY AUTHORITY

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 22, 2022.

TRD-202205193

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: January 15, 2023

Proposal publication date: October 14, 2022

For further information, please call: (512) 463-7750



SUBCHAPTER G. LICENSED MASSAGE ESTABLISHMENTS

16 TAC §117.82

STATUTORY AUTHORITY

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE STATEWIDE TESTING CALENDAR AND UIL PARTICIPATION

19 TAC §101.5001

The Texas Education Agency (TEA) adopts an amendment to §101.5001, concerning the statewide testing calendar. The amendment is adopted without changes to the proposed text as published in the October 7, 2022 issue of the *Texas Register* (47 TexReg 6551) and will not be republished. The adopted amendment provides clarification to existing statutory provisions and reflects changes made to the statewide assessment program by House Bill (HB) 3261, 87th Texas Legislature, Regular Session, 2021, which required state assessments to be administered online beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: With changes made to the statewide assessment program introduced by HB 3906, 86th Texas Legislature, 2019, and amended by HB 3261, 87th Texas Legislature, Regular Session, 2021, TEA determined that conforming amendments to its assessment rules needed to be made.

Texas Education Code (TEC), §39.02341, as amended by HB 3261, requires that TEA administer the State of Texas Assessments of Academic Readiness (STAAR®) online beginning not later than the 2022-2023 school year.

Section 101.5001, Commissioner's Rules Concerning the Statewide Testing Calendar and University Interscholastic League (UIL) Participation, addresses the primary administration of statewide assessments and outlines UIL scheduling criteria.

With the implementation of primarily online administrations for STAAR®, TEA has modified the testing calendar to allow more flexibility in scheduling assessments. The adopted amendment to §101.5001 modifies the language regarding the administration windows to provide that same flexibility. The previous one-week online and paper primary administration plus a one-week optional online administration were adjusted to a two-week administration for both online and paper. The adopted amendment also clarifies that the first week of the two-week testing window is the week of primary administration.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 7, 2022, and ended November 7, 2022. Following is a summary of public comments received and agency responses.

Comment: Two Texas administrators commented requesting to eliminate the first week of state testing being labeled as "primary" to avoid scheduling conflicts with UIL events.

Response: The agency disagrees. In accordance with the requirements of TEC, §33.0812(b), the commissioner of education must establish a school week during the school year in which the primary administration of assessment instruments occurs.

Comment: One Texas administrator commented expressing support for the designation of a primary administration week but asked to delay the implementation of the proposal until Summer 2023.

Response: The agency disagrees. Regardless of the school year, in accordance with TEC, §33.0812, the commissioner of education is required to determine the school week during the school year in which the primary administrations of assessment instruments are administered.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §33.0812, which prohibits University Interscholastic League participation on Monday through Thursday of the school week during the primary test administration period and provides the commissioner of education with related rulemaking authority; TEC, §39.001, which provides the commissioner of education with rulemaking authority as necessary to administer TEC, Chapter 39; and TEC, §39.023(c-3), which prohibits the scheduling of state assessments for students in Grades 3-8 and end-of-course assessments on the first instructional day of a week.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§33.0812, 39.001, and 39.023(c-3).

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 December 21, 2022.

TRD-202205144

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: January 10, 2023

Proposal publication date: October 7, 2022

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



CHAPTER 152. COMMISSIONER'S RULES CONCERNING EXAMINATION REQUIREMENTS

19 TAC §152.1001

The Texas Education Agency (TEA) adopts an amendment to §152.1001, concerning exceptions to examination requirements individuals certified outside the state. The amendment is adopted with changes to the proposed text as published in the September 23, 2022 issue of the *Texas Register* (47 TexReg 6078) and will be republished. The adopted amendment implements House Bill (HB) 139, 87th Texas Legislature, Regular Session, 2021, by adding military community members

to the population of educators licensed outside the state and eligible to qualify for an exception to examination requirements in Texas. The adopted amendment also provides additional edits to improve the readability and applicability of the rule and support continued consistency in completion of the test exemption review process.

REASONED JUSTIFICATION: Section 152.1001 outlines the requirements an educator licensed outside the state must meet to qualify for exemption from Texas certification testing requirements.

HB 139, 87th Texas Legislature, Regular Session, 2021, amended Texas Education Code (TEC), §21.052(a-1), to specifically reference military service members, military spouses, and military veterans. To implement HB 139, the adopted amendment to subsection (a) emphasizes that military service members, military spouses, and military veterans are within the population of educators licensed outside the state and eligible for consideration of an exemption from in-state testing requirements for Texas certificate issuance. In addition, subsection (b) includes new definitions for "military service member," "military spouse," and "military veteran."

Subsection (b) is also amended to add definitions for "certification class," "educator," and "educator from outside the state" to ensure clarity and consistency throughout the chapter. The definition for "standard certificate" is updated to clarify it is a credential issued outside of Texas to serve in the role of a classroom teacher. The reference to 19 TAC §230.33, Classes of Certificates, is deleted since these educators are applicants for certification and have not yet received a Texas standard certificate issued by the State Board for Educator Certification (SBEC). The definition for "Texas review of credentials" is updated to reference the SBEC rules that outline the processes used to issue state certification to individuals already licensed in other states and countries. In addition, subsection (b) is rearranged to alphabetize the definitions.

New subsection (c)(1)(C) adds a reference to the required years of experience as an educator to qualify for an exception to examination requirements. Standard certificate applicants are required to have at least one year of experience in the role of classroom teacher, and professional class certificate applicants are required to have at least two years of experience in the role of other than classroom teacher. These requirements were relocated from another subsection of the rule. This adopted amendment streamlines and consolidates without creating any new requirements.

New subsection (c)(1)(D) rennumbers subsection (c)(1)(C) and references how an applicant must demonstrate proficiency as an educator. The first option, which already exists in rule, is to demonstrate that the applicant has passed the examinations required by the licensing agency for issuance of his or her standard certificate. The adopted amendment adds a new option to allow an applicant to demonstrate that he or she has three or more years of verifiable, full-time experience in the role of teacher or other than classroom teacher. This amendment allows educators who already have extensive experience teaching in other states to avoid the hassle and time required to prove their scores on other states' certification examinations. Other states that allow exceptions for teacher certification examinations, such as Arkansas, Colorado, Hawaii, Maryland, New York, Ohio, and Virginia, require educators to have three years of teaching experience to qualify for the exception. The adopted amendment adopts the same standard that has worked in these other states.

The adopted amendment to subsection (c)(2)(B) adds Colorado, Michigan, Pennsylvania, and Washington to the list of states that qualify an individual for an exception to the required Science of Teaching Reading TExES examination and rennumbers the alphabetical listing of the states. Since this rule was last amended, these states have adopted a requirement that educator candidates demonstrate proficiency in reading as part of licensure.

The adopted amendment to subsection (c)(3) provides technical edits to clarify the requirements an applicant from outside the state must meet prior to being considered for an exception to Texas examination requirements. The adopted amendment also confirms that TEA staff will verify documents and grant exceptions to examination requirements in accordance with requirements established in this rule. All information specific to SBEC's governing processes to complete a Texas review of credentials for applicants licensed in other states or countries has been removed because it was duplicative of the requirements codified by the SBEC in 19 TAC Chapter 230, Professional Educator Preparation and Certification, and Chapter 245, Certification of Educators from Other Countries.

The adopted amendment removes former subsection (d) because the requirements for approval of an exception to examination requirements, including required years of experience, demonstration of proficiency, and issuance of a standard certificate by a licensing agency outside of Texas, has been incorporated into subsection (c).

Changes were made to the rule since published as proposed. The following changes have been made in response to public comments.

The adopted amendment to subsection (c)(1)(B) adds language to further specify that individuals certified in other countries must have also completed an educator preparation program, including a teaching practicum, to be eligible for an exemption from the certification examinations. The additional wording added at adoption addresses a concern from the Texas Classroom Teachers Association (TCTA) that the elimination of previous section (c)(3)(B) made the requirements for individuals holding certificates from another country unclear.

The adopted amendment to subsection (c)(1)(C)(i) and (ii) adds clarifying adjectives *academic* year and *verifiable* and *full-time* experience to further define the requirements for standard certificate applicants and professional class certificate applicants seeking an exception to examination requirements that would lead to licensure in Texas. The additional adopted wording retains consistency in use of the terms throughout the rule and ensures that none of the original meaning was lost when provisions were consolidated into subsection (c)(1) through the adopted amendments.

The adopted amendment to subsection (c)(1)(E) adds language that clarifies that, in addition to being equivalent to a Texas standard classroom or professional class certificate, the credential issued by the state department of education or country of licensure must not have been revoked, suspended, or sanctioned for misconduct and must not be pending disciplinary or adverse action. This adopted amendment addresses TCTA's concern that by removing the requirement for a letter of good standing, the proposed amendment went too far and removed the limitation that a candidate for an exemption not be subject to discipline for misconduct in the other state or country where the individual is licensed. The adopted amendment ensures candidates will not

be subject to discipline without creating the onerous paperwork involved in requiring a letter of good standing.

SUMMARY OF COMMENTS AND AGENCY RESPONSES The public comment period on the proposal began September 23, 2022, and ended October 24, 2022. Following is a summary of public comments received and agency responses.

Comment: An individual commented in opposition to the proposed amendment because Louisiana was not proposed for inclusion in the list of states that are exempt from the Science of Teaching Reading (STR) exam.

Response: The agency disagrees. Louisiana is not eligible for inclusion in the list of states from which candidates are exempt from the STR examination because Louisiana does not require its educators to take an examination equivalent to the STR for certification.

Comment: An individual commented in favor of the amendment and believes the changes will expedite the certification process and be beneficial to Texas and teacher from other states.

Response: The agency agrees that it is beneficial to all parties involved to streamline and expedite the certification process where feasible.

Comment: An individual commented in favor of the amendment and called it a "win-win" situation that will help Texas with the teacher shortage and will benefit out-of-state certified teachers with actual classroom teaching experience to secure employment.

Response: The agency agrees that it is beneficial to all parties involved to streamline and expedite the certification process where feasible.

Comment: An individual commented in favor of the amendment and stated that more positions would be filled if experienced teachers who now live in Texas could obtain certification using use their credentials, degrees, and experience without additional testing requirements.

Response: The agency agrees that it is beneficial to all parties involved to streamline and expedite the certification process where feasible.

Comment: TCTA commented against the proposed amendment because the proposed striking of subsection (c)(3)(B)(i)(II) removed language regarding educator preparation programs and teaching practicums for educators from other countries. TCTA recommended that a clarification be added at adoption to clarify that the provisions in subsection (c)(1)(B) also apply to individuals holding certification from another country.

Response: The agency agrees and added language to subsection (c)(1)(B) to further specify that individuals certified in other countries must have also completed an educator preparation program, including a teaching practicum.

Comment: TCTA commented against the proposed amendment because the description of the required experience as "at least one academic year of verifiable, full-time experience," which appears in subsection (d)(2) that is proposed for deletion, should be retained in rule for clarity and consistency.

Response: The agency agrees and amended the rule at adoption to read, "academic years of verifiable, full-time experience" as relates to an educator's years of experience in new subsection (c)(1)(C)(i) and (ii).

Comment: TCTA commented against the proposed amendment, stating that providing an "experience" option in subsection (c)(1)(D) would allow an educator holding out of state/country certification, for which passage of a certification exam was not required, to then be eligible for exemption from a Texas certification exam without ever having proved through an objective measure that the individual was competent to teach. TCTA requested that the language be amended to require all individuals to have passed a certification examination in another state or country to be exempt from the Texas certification examination.

Response: The agency disagrees. The addition of an "experience" option in subsection (c)(1)(D) allows seasoned/tenured educators with numerous years of experience in their established fields prior to transferring to Texas to avoid the hassle and expense of taking the Texas certification examination. In addition, given the rigor of the initial credentials review process in Texas, supported by SBEC rules, the agency has determined that retaining the experience option is appropriate. The agency anticipates that this option will be used rarely, as most states and countries require certification examinations for all certified educators.

Comment: TCTA commented against the proposed amendment because the proposed deletion of the requirement in subsection (c)(3)(B)(iii), removing the requirement that an educator provides a letter of good standing, would allow educators who were subject to disciplinary action in their home state or country to get an exemption from the Texas certification examination. TCTA requested that language be added to subsection (c)(1)(E) to confirm that an individual's certification must be in good standing and not subject to any pending disciplinary or other action.

Response: The agency agrees and added language to subsection (c)(1)(E) at adoption to clarify that a candidate for an exemption must not be revoked, suspended, or subject to any pending disciplinary or other action in the other state or country.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.052(a-1), as amended by House Bill 139, 87th Texas Legislature, Regular Session, 2021, which permits the commissioner of education to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state, including military service members, military spouses, and military veterans, to obtain a certificate in Texas.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.052(a-1).

§152.1001. Exceptions to Examination Requirements for Individuals Certified Outside the State.

(a) General provisions. Texas Education Code (TEC), §21.052(a-1), permits the commissioner of education to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state, including military service members, military spouses, and military veterans, to obtain a certificate in Texas.

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

(1) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics and includes the following: superintendent, principal, classroom teacher, school counselor, school librarian, educational diagnostician, reading specialist, and master teacher.

(2) Educator--An individual who is required to hold a certificate issued under TEC, Chapter 21, Subchapter B.

(3) Educator from outside the state--An applicant certified outside of Texas who has successfully completed all requirements for issuance of licensure in another state or country.

(4) Equivalent--Covering a majority of the same grade level and subject or assignment area as certificates issued by the State Board for Educator Certification.

(5) Examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's certification as an educator.

(6) Military service member--A person who is on active duty.

(7) Military spouse--A person who is married to a military service member.

(8) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(9) Professional class certificate--A term that refers to certificates for duties other than classroom teacher (e.g., superintendent, principal, school counselor, school librarian, educational diagnostician, and reading specialist).

(10) Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certification as a classroom teacher.

(11) Texas review of credentials--An internal process completed by Texas Education Agency (TEA) to confirm an applicant certified outside of Texas meets general requirements for certification specified in Chapter 230, Subchapter H, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries) and to identify the certificate areas the applicant is eligible to pursue in Texas.

(c) Minimum requirements.

(1) An applicant must meet the following general requirements for certification to be considered for an exception to the examinations, other than the Science of Teaching Reading TExES examination, required for issuance of state licensure:

(A) obtain a bachelor's degree from an institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(B) complete a state-approved educator preparation program, or preparation program for licensure in another country, including student teaching or a teaching practicum, in the state or country where the standard certificate was issued;

(C) have the following required years of experience as an educator:

(i) for standard certificate applicants, at least one academic year of verifiable, full-time experience in the certification class for which the applicant is seeking certification; or

(ii) for professional class certificate applicants, at least two academic years of verifiable, full-time experience in the certification class for which the applicant is seeking certification;

(D) demonstrate proficiency as an educator by either:

(i) passing the examinations required by the state department of education or country of licensure for issuance of the standard certificate; or

(ii) having three or more years of verifiable, full-time experience in the certificate class for which the applicant is applying; and

(E) hold a standard certificate issued by the state department of education or country of licensure that is equivalent to a Texas standard classroom or professional class certificate and that has not been revoked, suspended, or sanctioned for misconduct and is not pending disciplinary or adverse action.

(2) In addition to the requirements of paragraph (1) of this subsection, to be considered for an exception to the required Science of Teaching Reading TExES examination, an applicant must fulfill the following requirements:

(A) hold a certificate that is equivalent to a Texas certificate for which the Science of Teaching Reading TExES examination is required as a content pedagogy examination under §230.21 of this title (relating to Educator Assessment); and

(B) submit documentation from a test provider or the state department of education of passing performance on a stand-alone assessment that requires demonstration of proficiency in the five components of scientifically based reading instruction (phonemic awareness, phonics, fluency, vocabulary, and comprehension) that was taken to meet licensure requirements in one of the following states:

- (i) Alabama;
- (ii) Alaska;
- (iii) Arkansas;
- (iv) California;
- (v) Colorado;
- (vi) Connecticut;
- (vii) Florida;
- (viii) Indiana;
- (ix) Maryland;
- (x) Massachusetts;
- (xi) Michigan;
- (xii) Minnesota;
- (xiii) Mississippi;
- (xiv) New Hampshire;
- (xv) New Mexico;
- (xvi) North Carolina;
- (xvii) Ohio;
- (xviii) Oklahoma;
- (xix) Pennsylvania;
- (xx) Tennessee;
- (xxi) Virginia;
- (xxii) Washington;
- (xxiii) West Virginia; or
- (xxiv) Wisconsin.

(3) An applicant from outside the state who meets requirements specified in paragraph (1) of this subsection must apply online for a review of credentials by the TEA prior to being considered for an exception to the examination requirements for state licensure. Once all required documentation has been submitted by the applicant and reviewed and verified by TEA staff, the applicant will be issued an exception to the examination requirements by the TEA in accordance with minimum requirements established by the commissioner as specified in 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 December 21, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 157. HEARINGS AND APPEALS

The Texas Education Agency adopts amendments to §§157.1049, 157.1050, 157.1051, 157.1059, 157.1060, 157.1072, and 157.1102, concerning hearings and appeals. The amendments are adopted without changes to the proposed text as published in the October 28, 2022 issue of the *Texas Register* (47 TexReg 7209) and will not be republished. The adopted amendments modify the rules to provide for electronic filings and service of documents with the agency's division responsible for hearings and appeals.

REASONED JUSTIFICATION: Texas Government Code (TGC), §2001.004, requires that state agencies adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Section 157.1049, Filing of Documents with the Commissioner of Education, implements TGC, §2001.004, by defining the requirements for the filing of documents with the commissioner. The adopted amendment to subsection (c) modifies the requirement that all filed documents must be mailed, hand-delivered, or faxed to the agency's division responsible for hearings and appeals to include electronic filing.

Section 157.1050, Service of Documents on Other Parties, implements TGC, §2001.004, by defining the requirements for service of documents on other parties. The adopted amendment to §157.1050 modifies the requirement that all documents filed with the agency's division responsible for hearings and appeals shall be served on all parties or party representatives by the same method as the document was filed with the agency, to include that electronic service may be substituted for personal service.

Section 157.1051, Petition for Review, implements TGC, §2001.004, by defining the required information that must be included in a petition for review filed with the commissioner. The adopted amendment to subsection (a)(6) and (7) would require that the petition for review include email addresses for the petitioner, the respondent, and/or their representatives.

Section 157.1059, Filing of Exceptions and Replies to Proposal for Decision, implements TGC, §2001.004, by defining the delivery method for a proposal for decision. The adopted amendment to subsection (a) modifies the delivery requirement for the proposal for decision to allow for electronic delivery.

Section 157.1060, Orders, implements TGC, §2001.004, by defining the delivery method for all final decision or order of the commissioner. The adopted amendment to §157.1060 modifies the requirement that party representatives be simultaneously notified all final decision or order of the commissioner to include service by email.

Section 157.1072, Hearings Brought Under Texas Education Code, Chapter 21, Subchapter G, implements TGC, §2001.004, by defining the required information that must be included in a petition for review filed with the commissioner. The adopted amendment to subsection (c)(5) and (6) modifies the requirement that the petition for review include email addresses for the petitioner, the respondent, and/or their representatives.

Section 157.1102, Assignment of Independent Hearing Examiners, implements TGC, §2001.004, by specifying the requirements for assigning cases to independent hearing examiners. The adopted amendment to subsections (a) and (b) modifies the requirement that the division of hearings and appeals notify an independent hearing examiner of an assignment by facsimile to include email and to allow independent hearing examiners to acknowledge the assignment and indicate whether he or she is able to accept the assignment by email.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 28, 2022 and ended November 28, 2022. No public comments were received.

SUBCHAPTER AA. GENERAL PROVISIONS FOR HEARINGS BEFORE THE COMMISSIONER OF EDUCATION

19 TAC §§157.1049 - 157.1051, 157.1059, 157.1060

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.057, which gives the commissioner of education jurisdiction over violations of Texas school law and certain employment contracts; TEC, §21.301, which gives the commissioner jurisdiction over teacher terminations, nonrenewals, and suspensions without pay; TEC, §21.254, which provides the requirements for maintaining a list of names of all persons who have been certified as hearing examiner and the procedures for assigning a hearing examiner to a case; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice for formal and informal procedures.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.057, 21.301, and 21.254, and Texas Government Code, §2001.004.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497



SUBCHAPTER BB. SPECIFIC APPEALS TO THE COMMISSIONER

19 TAC §157.1072

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.057, which gives the commissioner of education jurisdiction over violations of Texas school law and certain employment contracts; TEC, §21.301, which gives the commissioner jurisdiction over teacher terminations, nonrenewals, and suspensions without pay; TEC, §21.254, which provides the requirements for maintaining a list of names of all persons who have been certified as hearing examiner and the procedures for assigning a hearing examiner to a case; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice for formal and informal procedures.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.057, 21.301, and 21.254, and Texas Government Code, §2001.004.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497



SUBCHAPTER DD. HEARINGS CONDUCTED BY INDEPENDENT HEARING EXAMINERS

19 TAC §157.1102

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.057, which gives the commissioner of education jurisdiction over violations of Texas school law and certain employment contracts; TEC, §21.301, which gives the commissioner jurisdiction over teacher terminations, nonrenewals, and suspensions without pay; TEC, §21.254, which provides the requirements for maintaining a list of names of all persons who have been certified as hearing examiner and the procedures for assigning a hearing examiner to a case; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice for formal and informal procedures.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.057, 21.301, and 21.254, and Texas Government Code, §2001.004.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) adopts amendments to §4.1, concerning Transportation of Hazardous Materials. This rule is adopted without changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7523) and will not be republished.

The proposed amendments harmonize updates to Title 49, Code of Federal Regulation with those laws adopted by Texas.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2022.

TRD-202205125

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 8, 2023
Proposal publication date: November 11, 2022
For further information, please call: (512) 424-5848



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety (the department) adopts amendments to §4.11, concerning General Applicability and Definitions. This rule is adopted without changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7524) and will not be republished.

The proposed amendments harmonize updates to Title 49, Code of Federal Regulation with those laws adopted by Texas. Additionally, this amendment provides clarification of the adoption of entry level driver training requirements as adopted by Federal Motor Carrier Safety Administration in 49 CFR Part 380.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848



37 TAC §4.12

The Texas Department of Public Safety (the department) adopts amendments to §4.12, concerning Exemptions and Exceptions. This rule is adopted without changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7526) and will not be republished.

The proposed amendments harmonize updates to Title 49, Code of Federal Regulation with those laws adopted by Texas. Additionally, this amendment provides clarification of the adoption of entry level driver training requirements as adopted by Federal Motor Carrier Safety Administration in 49 CFR Part 380.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins
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For further information, please call: (512) 424-5848



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 401. ADMINISTRATIVE PRACTICE AND PROCEDURE

The Texas Commission on Fire Protection (commission) adopts amendments to 37 Texas Administrative Code Chapter 401, Administrative Practice and Procedure. Amended title change from Executive Director to Agency Chief in: §401.5. Delegation of Authority, §401.9. Records of Official Action, §401.11. Conduct of Commission and Advisory Meetings, §401.13. Computation of Time, §401.19. Petition for Adoption of Rules, §401.21. Examination Challenge, §401.41. Preliminary Staff Conference, §401.59. Orders, §401.61. Record, §401.105. Administrative Penalties, §401.119. Failure To Appear for Reinstatement, §401.127. Appeal, and §401.129. Charges for Public Records. The amended sections are adopted without changes to the text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6408). The rules will not be republished.

Section 401.3. Definitions was adopted with change to alphabetize the definitions. Section 401.7. Construction, with change to correct grammatical errors. The amended sections are adopted with changes to the text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6408). The rules will be republished.

The purpose of the proposed title change is to reflect the new title of the head of agency.

No comments were received from the public regarding the adoption of the amendments.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

37 TAC §§401.3, 401.5, 401.7, 401.9, 401.11, 401.13

The amended sections are adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commis-

sion. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification.

§401.3. *Definitions.*

The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise:

(1) **Advisory Committee**--An advisory committee that is required to assist the commission in its rule-making function and whose members are appointed by the commission pursuant to Government Code, §419.008, or other law.

(2) **Agency**--Includes the commission, the Agency Chief, and all divisions, departments, and employees thereof.

(3) **Agency Chief** --The Agency Chief appointed by the commission pursuant to Government Code, §419.009.

(4) **APA**--Government Code, Chapter 2001, The Administrative Procedure Act, as it may be amended from time to time.

(5) **Applicant**--A person, including the commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(6) **Application**--A written request seeking a license from the commission, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(7) **Authorized Representative**--A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate in a commission proceeding.

(8) **Chairman**--The commissioner who serves as presiding officer of the commission pursuant to Government Code, §419.007.

(9) **Commission**--The Texas Commission on Fire Protection.

(10) **Commissioner**--One of the appointed members of the decision-making body defined as the commission.

(11) **Complainant**--Any person, including the commission's legal staff, who files a signed written complaint intended to initiate a proceeding with the commission regarding any act or omission by a person subject to the commission's jurisdiction.

(12) **Contested Case**--A proceeding, including but not restricted to, the issuance of certificates, licenses, registrations, permits, etc., in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing.

(13) **Days**--Calendar days, not working days, unless otherwise specified in this chapter or in the commission's substantive rules.

(14) **Division**--An administrative unit for regulation of specific activities within the commission's jurisdiction.

(15) **Hearings Officer**--An administrative law judge on the staff of the State Office of Administrative Hearings assigned to conduct a hearing and to issue a proposal for decision, including findings of fact and conclusions of law, in a contested case pursuant to Government Code, Chapter 2003.

(16) **License**--Includes the whole or part of any agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.

(17) **Licensee**--A person who holds an agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.

(18) **Licensing**--Includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(19) **Party**--Each person or agency named or admitted as a party in a contested case.

(20) **Person**--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the commission.

(21) **Pleading**--A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a commission proceeding.

(22) **Preliminary Staff Conference**--A conference with commission staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case.

(23) **Presiding Officer**--The chairman, the acting chairman, the Agency Chief, or a duly authorized hearings officer.

(24) **Proceeding**--Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint.

(25) **Respondent**--A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

(26) **SOAH**--State Office of Administrative Hearings.

§401.7. *Construction.*

(a) A provision of a rule referring to the commission or the chairman, or a provision of a rule referring to the Agency Chief as the presiding officer, is construed to apply to the commission or chairman, if the matter is within the jurisdiction of the commission, or to the Agency Chief, if the matter is within the jurisdiction of the Agency Chief.

(b) Unless otherwise provided by law, any duty imposed on the commission, the chairman, or the Agency Chief may be delegated to a duly authorized representative. In such case, the provisions of any rule referring to the commission, the chairman, or the Agency Chief shall be construed to also apply to the duly authorized representative of the commission, the chairman, or the Agency Chief.

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 December 22, 2022.

TRD-202205178

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Effective date: January 11, 2023

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For further information, please call: (512) 936-3841



SUBCHAPTER B. RULEMAKING PROCEEDINGS

37 TAC §401.19

The amended section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3841



SUBCHAPTER C. EXAMINATION APPEALS PROCESS

37 TAC §401.21

The amended section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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SUBCHAPTER E. PREHEARING PROCEEDINGS

37 TAC §401.41

The amended section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend

rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mike Wisko

Agency Chief

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SUBCHAPTER F. CONTESTED CASES

37 TAC §401.59, §401.61

The amended sections are adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mike Wisko

Agency Chief

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SUBCHAPTER G. CONDUCT AND DECORUM, SANCTIONS, AND PENALTIES

37 TAC §401.105

The amended section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3841



SUBCHAPTER H. REINSTATEMENT

37 TAC §401.119

The amended section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3841



SUBCHAPTER I. NOTICE AND PROCESSING PERIODS FOR CERTIFICATE APPLICATIONS

37 TAC §401.127

The amended section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3841



SUBCHAPTER J. CHARGES FOR PUBLIC RECORDS

37 TAC §401.129

The amended section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3841



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER H. COLLECTION ACTION

40 TAC §§815.190 - 815.192

The Texas Workforce Commission (TWC) adopts the following new subchapter to Chapter 815, relating to Unemployment Insurance:

Subchapter H. Collection Action, §§815.190 - 815.192

The new sections are adopted without changes to the proposed text as published in the August 12, 2022, issue of the *Texas Register* (47 TexReg 4843), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of new Chapter 815, Subchapter H is to establish administrative rules to implement and interpret Senate Bill (SB)

695, which was passed in 2021 by the 87th Texas Legislature, Regular Session.

When an employer does not timely pay its required unemployment taxes after being notified of the debt, the Texas Unemployment Compensation Act (TUCA) provides regulations for collecting the past due contributions. TUCA, Chapter 213, Subchapter C provides methods for collections of unpaid unemployment contributions, penalties, and interest by civil suit or Notice of Assessment (NOA). TWC is required to take this action. An NOA is only attempted after TWC has exhausted other avenues of tax collections including the tax statement, default notices, pre-assessment notifications, tax liens, and tax levies.

An NOA is a written decision of a tax authority where the amount of taxable income is determined and the amount of tax due is calculated. In 1989, House Bill 1941, 71st Texas Legislature, Regular Session, provided for collection of delinquent unemployment benefit taxes, penalties, or interest by serving an NOA on an employer that owes unemployment taxes. The Legislature granted TWC this authority after an audit by the Office of the State Auditor contained findings regarding the significant amount of time taken before a judgment can be obtained by civil suit.

The NOA correspondence totals the amount of taxes, penalties, or interest owed by the employer. Once the NOA is served upon the employer, TWC loses jurisdiction over the NOA and may not change it. After being served, the employer's sole avenue of redress of an grievance is through judicial review. If the employer does not seek judicial review, or if the assessment is upheld after judicial review, the assessment is final and is recorded as a judgment against the employer. The final NOA has the same effect as a final judgment of a district court.

SB 695, a TWC initiative that amended Texas Labor Code, §213.032(a), was signed by the Governor on June 4, 2021, and became effective on September 1, 2021.

Prior to the passage of SB 695, Texas Labor Code, §213.032(a) required TWC to serve an NOA in the same manner as provided in Texas Rules of Civil Procedure Rule 106.

Texas Rules of Civil Procedure Rule 106 allows for service by personal service or by certified mail by any person authorized by Texas Rules of Civil Procedure Rule 103. However, per Texas Rules of Civil Procedure Rule 103, an interested party, such as TWC, may not serve any process. This meant that TWC was required to use a process server to mail its NOAs to liable employers. With the passage of SB 695, this limitation is no longer in place.

Additionally, SB 695 addressed substituted service. In certain situations, an employer that owes unpaid contributions, interest, or penalties may try to escape liability by avoiding service of the NOA by personal service or mail. An example would be an employer residing in a gated community that will not allow access to a process server and the employer will not accept the mail. In these situations, Texas Rules of Civil Procedure Rule 106 states that a court may grant a substituted method of service. This created substantial difficulties as TWC could not seek substituted service because it did not have a cause number to petition for substituted service as no suit has been filed. Filing suit would defeat the Legislature's intended purpose of granting TWC the authority to issue NOAs as it is not uncommon for service to be unsuccessful in person or by mail.

Effective December 31, 2021, the Texas Supreme Court updated Texas Rules of Civil Procedure Rule 106 to allow substituted ser-

vice "in any other manner, including electronically by social media, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit."

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER H. COLLECTION ACTION

TWC adopts new Subchapter H, as follows:

§815.190. Service of a Notice of Assessment in General

New §815.190 provides general information about service of an NOA.

New §815.190 clarifies that the language in Texas Labor Code, §213.032(a)(3), which states, "in another manner that is reasonably calculated to give the employer notice of the assessment," be referred to as substituted service and that contesting service must be done in Travis County district court as required by Texas Labor Code, §213.032(c). New §815.190 also clarifies that Texas Labor Code, §213.032(a) provides TWC with the flexibility to serve parties itself or by designated third party.

New §815.190 informs parties of the addresses TWC may use for service by personal delivery or substituted service.

Texas Labor Code, §212.006(b) and §214.002(a)(3) allow for NOAs to be served upon claimants as well as employers. New §815.190 interprets certain language in Texas Labor Code, Chapter 213 to more clearly apply to claimant assessments in those situations. To that end, new §815.190 states the language in Texas Labor Code, §213.033(a) prescribing a three-year limitation on employer assessments for employer contributions, penalties, and interest be limited to the third anniversary after the benefit overpayment becomes final when it relates to claimant assessments. This interpretation is prudent as overpayment amounts may change during the dispute resolution process.

§815.191. Service of a Notice of Assessment by Personal Delivery or Mail

New §815.191 provides information and clarification regarding service of an NOA by personal delivery or mail.

New §815.191 clarifies what constitutes "address as shown by commission records" for Texas Labor Code, §213.032(a)(2) and that TWC or its designee may make multiple service attempts under Texas Labor Code, §213.032(a)(1) and (2) prior to attempting substituted service.

New §815.191 clarifies what address(es) shall be used when serving an NOA upon a claimant by personal delivery or mail.

§815.192. Service of a Notice of Assessment by Substituted Service

New §815.192 provides information and clarification regarding service of an NOA by substituted service.

New §815.192 clarifies that TWC or its designee may make multiple attempts at substituted service. It also provides methods by which TWC may effectuate substituted service. The enumerated methods are intended to put parties on notice of methods TWC intends to use and considers to be proper to effectuate substituted service, although the list is not exhaustive or dispositive in all circumstances.

Such methods may include those methods specifically mentioned by Texas Rules of Civil Procedure Rule 106(b) including by social media, email, or other technology, TWC-established

contact methods, including the Unemployment Tax Services and the Unemployment Benefits Services portals, or other mailing addresses that are not maintained in TWC records as required by Texas Labor Code, §213.032(a)(2). Other mailing addresses may include those obtained from third-party background and reporting agencies, online searches, and other government records.

Additionally, certain corporations may need to be served as prescribed by Texas Business Organizations Code, Chapter 5, and Civil Practice and Remedies Code, Chapter 17. This would be applicable when attempting personal or substituted service upon the corporation's registered agent or the Secretary of State if no valid agent exists. Only Texas Labor Code, §213.032(a)(2) contains a requirement that the NOA be mailed to an address in TWC records, so personal or substituted service can be attempted upon registered agents.

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 12, 2022. TWC received comments from Texas RioGrande Legal Aid, Inc. (TRLA).

COMMENT: TRLA stated its opposition to the proposed rules as they relate to the service of NOAs on claimants. TRLA is not commenting on the proposed rules as they relate to service upon employers. TRLA expressed concerns with due process for claimants and stated that claimants will not have a means to effectively challenge service.

RESPONSE: TWC appreciates TRLA's comments.

TWC is confident that the statutory framework of TUCA, SB 695, and new Chapter 815, Subchapter H provide due process to employers and claimants who may be served an NOA. TWC has had statutory authority to issue NOAs for claimant overpayments since 1989. Claimants are afforded multiple opportunities for review and redress before an assessment can be issued.

If either party to an adverse determination disagrees with TWC's decision, they may file an appeal within 14 days of the mailing of the determination for a hearing with the Appeal Tribunal.

If a party is dissatisfied with the Appeal Tribunal's decision, they may file an appeal with the Commission. If a party does not agree with the Commission's decision, they may file a Motion for Rehearing or file for judicial review of the Commission's final decision in a court of competent jurisdiction.

It is only after a determination creating an overpayment becomes final and the overpayment remains unpaid, despite opportunities for repayment, that TWC would consider an NOA as a collection action. Once TWC successfully serves the NOA, if the party wishes to contest the NOA or its service, they may do so upon judicial review as provided in Texas Labor Code, §213.032(c).

For these reasons, no changes have been made to the rules in response to the comments in opposition.

COMMENT: TRLA stated that the intent and language of SB 695 are meant to only apply to employers.

RESPONSE: TWC disagrees. Texas Labor Code, §212.006(b) and §214.002(a)(3) both expressly provide for using NOAs to collect claimant overpayments. TWC must presume that Texas Labor Code, §212.006(b) and §214.002(a)(3) are intended to be effective and that the reference to Texas Labor Code, §213.032 in Texas Labor Code, §212.006(b) and §214.002(a)(3) include the amendments from SB 695.

No changes were made to the rules in response to this comment.

COMMENT: TRLA objected to the methods of substituted service in the proposed rules.

RESPONSE: The statutory language is clear that TWC may effectuate substituted service itself, however, TWC must attempt personal service or registered or certified mail service first. Only after such service is not effective may TWC undertake substituted service, which must be reasonably calculated to provide notice of the assessment. TWC believes the rules as written do provide avenues reasonably calculated to give notice to claimants, which TWC will evaluate depending on the factual circumstances of each case. TWC declines to hypothesize various fact scenarios.

No changes were made to the rules in response to this comment.

COMMENT: TRLA expressed concerns with conformity to federal law.

RESPONSE: TWC requested an opinion from the United States Department of Labor (DOL) as to whether the proposed rules create a conformity issue with federal law. DOL's informal opinion is that the proposed rules do not pose an issue of conformity with federal unemployment compensation law as written.

No changes were made to the rules in response to this comment.

PART IV. STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015(a)(6), 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 affect Texas Labor Code, Title 4.

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 December 20, 2022.

TRD-202205133

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: January 9, 2023

Proposal publication date: August 12, 2022

For further information, please call: (512) 850-8356



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 91 continue to exist.

Comments regarding suggested changes to the rules in Chapter 91 may be submitted during this review but comments will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 91. Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. 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 comments should reference Non-Rule Project Number 2023-012-091-AI. Comments must be received by February 6, 2023. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

TRD-202205212

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 22, 2022



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 317, Design Criteria Prior to 2008.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the com-

mission will assess whether the reasons for initially adopting the rules in Chapter 317 continue to exist.

Comments regarding suggested changes to the rules in Chapter 317 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 317. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. 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 comments should reference Non-Rule Project Number 2023-014-317-OW. Comments must be received by February 5, 2023. For further information, please contact Shannon Gibson, Water Quality Division at (512) 239-4284.

TRD-202205213

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 22, 2022



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 337, Dry Cleaner Environmental Response.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 337 continue to exist.

Comments regarding suggested changes to the rules in Chapter 337 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 337. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. 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 comments should reference Non-Rule Project Number 2023-015-337-WS. Comments must be received by February 7, 2023. For further information, please contact Anna R. Brulloths, Project Manager, Remediation Division, at (512) 239-5052.

TRD-202205214

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 22, 2022



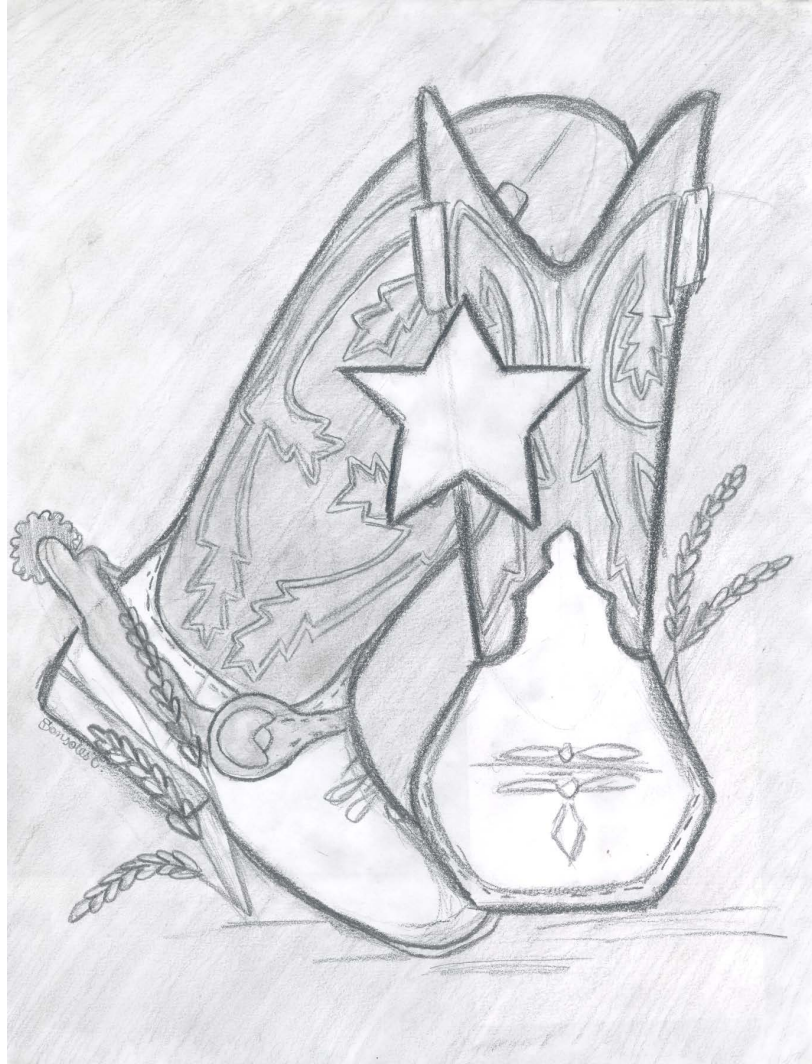
TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §18.25(b)

<u># OF PRIOR LATE OFFENSES IN LAST 5 YEARS</u>	<u>ADJUSTED FINE</u>
<u>0</u>	<u>Waiver</u>
<u>1</u>	<u>\$100</u>
<u>2</u>	<u>\$250</u>
<u>3 or more</u>	<u>No reduction or waiver</u>



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.

Capital Area Rural Transportation System

Publication of Notice

Capital Area Rural Transportation System (CARTS) invites qualified proposers to submit proposals for the architectural and engineering services CARTS requires to complete the renovation of its Smithville Station facility located at 300 NE Loop 230., Smithville, Texas 78957

An RFQ will be available for download on the CARTS Website beginning at 5:00 p.m., Thursday, December 22, 2022. Go to: <http://ridecarts.weebly.com/rfq-smithville-renovation.html>, and follow the instructions.

A non-mandatory pre-proposal meeting will be conducted at 2:00 p.m. January 10, 2023, at the Smithville Station.

Following are the required timeframes for the procurement:

Release of RFQ December 22, 2022, 5:00 p.m.

Pre-Proposal/Pre-Response meeting January 10, 2023, 2:00 p.m.

Written Questions January 16, 2023, 5:00 p.m.

Responses to questions January 20, 2023, 5:00 p.m.

Response Due Date January 24, 2023, 2:00 p.m.

Interviews (if necessary) January 26, 2023 (TBD)

Selection and Award February 2, 2023

Successful implementation/begin project: 30 days after notice to proceed

TRD-202205199

David L. Marsh

CARTS General Manager

Capital Area Rural Transportation System

Filed: December 22, 2022

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/02/23 - 01/08/23 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/02/23 - 01/08/23 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-202205253

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 27, 2022

Texas Education Agency

Notice of Correction Concerning Request for Student Reading Instrument, Grade 7

The Texas Education Agency (TEA) published Request for Student Reading Instrument, Grade 7 in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7939).

TEA is extending the deadline for submitting a completed application. The revised deadline is January 27, 2023.

Further Information. For clarifying information, contact the TEA Curriculum Standards and Student Support Division at (512) 463-9581 or curriculum@tea.texas.gov.

Issued in Austin, Texas, on December 28, 2022.

TRD-202205257

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: December 28, 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 **February 7, 2023**. 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 **February 7, 2023**. 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: City of Petersburg; DOCKET NUMBER: 2022-1235-UTL-E; IDENTIFIER: RN103905543; LOCATION: Petersburg, Hale County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$450; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Edna Derrick-Humble dba Cougar Country Water System; DOCKET NUMBER: 2022-1245-UTL-E; IDENTIFIER: RN102687548; LOCATION: Buna, Jasper County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$600; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: MELROSE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1269-UTL-E; IDENTIFIER: RN102689346; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Michael Burriss and Christine Taylor; DOCKET NUMBER: 2022-0759-MSW-E; IDENTIFIER: RN111177341; LOCATION: Marion, Guadalupe County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Rollins Hills Estates Water Supply Corporation; DOCKET NUMBER: 2022-1316-UTL-E; IDENTIFIER: RN101219434; LOCATION: Fort Worth, Parker County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$500; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Signal Hill Water System 24; DOCKET NUMBER: 2022-1283-UTL-E; IDENTIFIER: RN101271146; LOCATION: Signal Hill, Hays County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$510; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: SOLAR TURBINES INCORPORATED; DOCKET NUMBER: 2022-0211-AIR-E; IDENTIFIER: RN100214477; LOCATION: Channelview, Harris County; TYPE OF FACILITY: turbine and turbine parts manufacturing facility; RULES VIOLATED: 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 Code of Federal Regulations §63.6603(a), Federal Operating Permit (FOP) Number O1130, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 1.A, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maintenance requirements for existing stationary reciprocating internal combustion engines located at an area source of hazardous air pollutants emissions; 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 19157, Special Conditions (SC) Number 16.C, FOP Number O1130, GTC and STC Number 11, and THSC, §382.085(b), by failing to calibrate and maintain a differential pressure gauge to monitor the pressure drop across the baghouse filters; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19157, SC Number 16.H, FOP Number O1130, GTC and STC Number 11, and THSC, §382.085(b), by failing to conduct monthly audio, visual, and olfactory inspections; 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O1130, GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance, and failing to submit the deviation report no later than 30 days after the end of each reporting period; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O1130, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and (15) and §122.165(a)(7), FOP Number O1130, GTC, and THSC, §382.085(b), by failing to include a signed certification of accuracy and completeness; PENALTY: \$29,350; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: St. Paul Water Supply Corporation; DOCKET NUMBER: 2019-1521-MWD-E; IDENTIFIER: RN101518421; LOCATION: Sinton, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), (4), and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014119001, Operational Requirements Number 1 and Permit Conditions Number 2.d, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, and failing to take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$12,375; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(9) COMPANY: UTXL Manufacturing LLC; DOCKET NUMBER: 2021-1384-AIR-E; IDENTIFIER: RN100212828; LOCATION: Houston, Harris County; TYPE OF FACILITY: railroad rolling stock manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1729, General

Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$4,250; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202205215

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: December 27, 2022



Enforcement Orders

An agreed order was adopted regarding City of Seymour, Docket No. 2021-0085-PWS-E on December 27, 2022, assessing \$1,380 in administrative penalties with \$276 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TIDWELL WASTEWATER UTILITY, L.L.C., Docket No. 2021-0651-PWS-E on December 27, 2022, assessing \$1,208 in administrative penalties with \$241 deferred. Information concerning any aspect of this order may be obtained by contacting Epi Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 4S NOORANI INVESTMENT INC. dba Grab N Go Express, Docket No. 2021-0737-PST-E on December 27, 2022, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding U.S. Department of Veterans' Affairs, Docket No. 2021-0955-PST-E on December 27, 2022, assessing \$7,125 in administrative penalties with \$1,425 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Benchmark Materials, LLC, Docket No. 2021-1072-WQ-E on December 27, 2022, assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Tahoka, Docket No. 2021-1191-MWD-E on December 27, 2022, assessing \$675 in administrative penalties with \$135 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MANTHA 2111 INC dba SOUTH CENTRAL 1ST GAS, Docket No. 2022-0014-PST-E on December 27, 2022, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at

(512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding South Frankford Commercial Park, L.L.C., Docket No. 2022-0016-PWS-E on December 27, 2022, assessing \$3,250 in administrative penalties with \$650 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake Livingston Water Supply Corporation, Docket No. 2022-0026-PWS-E on December 27, 2022, assessing \$1,601 in administrative penalties with \$320 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FOOTHILLS MOBILE HOME RANCH, INC., Docket No. 2022-0197-PWS-E on December 27, 2022, assessing \$1,575 in administrative penalties with \$315 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Winkler Water Supply Corporation, Docket No. 2022-0209-PWS-E on December 27, 2022, assessing \$2,838 in administrative penalties with \$567 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 8300 INVESTMENTS, INC. dba Rowdy's Food Mart, Docket No. 2022-0330-PST-E on December 27, 2022, assessing \$3,600 in administrative penalties with \$720 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARGUAMOR INC. dba MORENO'S EXXON, Docket No. 2022-0354-PST-E on December 27, 2022, assessing \$5,969 in administrative penalties with \$1,193 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southwest Texas Commercial Properties LLC dba Star Stop 430531, Docket No. 2022-0386-PST-E on December 27, 2022, assessing \$4,425 in administrative penalties with \$885 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SOUTHERN HORIZONS DEVELOPMENT, INC., Docket No. 2022-0493-PWS-E on December 27, 2022, assessing \$687 in administrative penalties with \$137 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Transportation, Docket No. 2022-0496-PST-E on December 27, 2022, assessing \$4,500 in administrative penalties with \$900 deferred. Infor-

mation concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Goodwill AB Inc dba Willis Food Mart, Docket No. 2022-0498-PST-E on December 27, 2022, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SUNNY SKIES RETAILER INC. dba EZ In N Out 2, Docket No. 2022-0509-PST-E on December 27, 2022, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Horus Garcia, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KARMAN DHILLON INC dba Nu Way, Docket No. 2022-0516-PST-E on December 27, 2022, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Janet Rivera, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TAKHAR & SON, L.L.C. dba Texas Oasis, Docket No. 2022-0517-PST-E on December 27, 2022, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Surjit Singh dba Express Food Mart, Docket No. 2022-0521-PST-E on December 27, 2022, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Covington, Docket No. 2022-0544-PWS-E on December 27, 2022, assessing \$475 in administrative penalties with \$95 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202205256

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 28, 2022



Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Renewal and Notice of Pretreatment Program Substantial Modification

Notice Issued December 23, 2022

APPLICATION NO. WQ0014889001; City of Waco, 300 Austin Avenue, Waco, Texas 78716, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant

Discharge Elimination System (TPDES) Permit No. WQ0014889001 to authorize modifications to the Other Requirements and increase in the discharge of treated wastewater to a volume not to exceed an annual average flow of 4,000,000 gallons per day. A substantial modification to the approved pretreatment program has also been included. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. TCEQ received this application on February 17, 2022.

The facility is located at 1646 Cooksey Lane, Lorena, in McLennan County, Texas 76655. The treated effluent is discharged to Bull Hide Creek, thence to Brazos River Above Navasota River in Segment No. 1242 of the Brazos River Basin. The unclassified receiving water use is high aquatic life use for Bull Hide Creek. The designated uses for Segment No. 1242 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected Bull Hide Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.18005%2C31.40494&level=12>

The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication. Approval of the request for modification to the approved pretreatment program will allow the applicant to incorporate the Streamlining Rule requirements, revising the legal authority, enforcement response plan, and standard operating procedures (including forms) which incorporate such revisions. The following treatment work facilities will be subject to the requirements of the pretreatment program: TPDES Permit Nos. WQ0011071001 and WQ0014889001.

The TCEQ Executive Director has completed the technical review of the application, the pretreatment program substantial modification and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The pretreatment program substantial modification, fact sheet and executive director's preliminary decision, and draft permit are available for viewing and copying at Waco City Hall, 300 Austin Avenue, Waco, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application or the application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application or the application for the substantial modification of the pretreatment program. TCEQ

holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or application for substantial modification of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application, the application for substantial modification of the pretreatment program, or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Waco at the address stated above or by calling Mr. Charles Leist, Deputy Director, at (254) 750-6642.

TRD-202205255

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 28, 2022



Notice of Public Meeting for Air Quality Permits Air Quality Permit Numbers 140763, PSDTX1500M1, and GHGPSDTX46M1; 19871, PSDTX1236M1, and GHGPSDTX221; 91780, PSDTX1240M1, and GHGPSDTX223; 19200, PSDTX1237M1, and GHGPSDTX218; 19168, PSDTX1226M1, and GHGPSDTX224; 107518, PSDTX1383M2, and GHGPSDTX48M1; 20203, PSDTX1224M1, and GHGPSDTX222; 40157, PSDTX1222M1, and GHGPSDTX225; 19201, PSDTX1232M1, and GHGPSDTX219

APPLICATION. Formosa Plastics Corporation, Texas, Post Office Box 700, Point Comfort, Texas 77978-0700, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to State Air Quality Permits 140763, 19871, 91780, 19200, 19168, 107518, 20203, 40157, and 19201, modification to Prevention of Significant Deterioration (PSD) Air Quality Permits PSDTX1500M1, PSDTX1236M1, PSDTX1240M1, PSDTX1237M1, PSDTX1226M1, PSDTX1383M2, PSDTX1224M1, PSDTX1222M1, and PSDTX1232M1, modification to Greenhouse Gas (GHG) PSD Air Quality Permits GHGPSDTX46M1 and GHGPSDTX48M1 for emissions of GHGs, and issuance of GHG PSD Air Quality Permits GHGPSDTX221, GHGPSDTX223, GHGPSDTX218, GHGPSDTX224, GHGPSDTX222, GHGPSDTX225, and GHGPSDTX219 for emissions of GHGs, which would authorize modification to the Formosa Point Comfort Plant located at 201 Formosa Drive, Point Comfort, Calhoun County, Texas 77978. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The ex-

isting facility will emit the following air contaminants in a significant amount: carbon monoxide, nitrogen oxides, and organic compounds. In addition, the facility will emit the following air contaminants: hazardous air pollutants, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, and sulfuric acid mist.

A full PSD increment analysis was not required because the predicted impacts of all pollutants subject to PSD increment review were below the significant impact level for each pollutant.

The executive director has determined that the emissions of air contaminants from the existing facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, February 2, 2023 at 7:00 P.M.

Bauer Community Center

2300 State Highway 35 N

Port Lavaca, Texas 77979

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination

summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, the Calhoun County Public Library - Port Lavaca Branch, 200 West Mahan Street, Port Lavaca, Calhoun County, and the Jackson County Memorial Library, 411 North Wells Street, Edna, Jackson County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas. Further information may also be obtained from Formosa Plastics Corporation Texas at the address stated above or by calling Ms. Tamara Wacker, Corporate Air Permitting Manager at (302) 383-1598.

INFORMATION AVAILABLE ONLINE. These documents are accessible through the Commission's Web site at www.tceq.texas.gov/goto/cid: the executive director's preliminary decision which includes the draft permit, the executive director's preliminary determination summary, air quality analysis, and, once available, the executive director's response to comments and the final decision on this application. Access the Commissioners' Integrated Database (CID) using the above link and enter the permit number for this application. The public location mentioned above provides public access to the internet. 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=28.6888&lng=-96.5472&zoom=13&type=r>.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: December 28, 2022

TRD-202205259

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 28, 2022



Notice of Water Quality Application

The following notice was issued on December 21, 2022:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (10) DAYS FROM THE NOTICE ISSUANCE DATE.

INFORMATION SECTION

Hays County Municipal Utility District No. 5 has applied for a minor amendment to the TCEQ permit to authorize to authorize the addition of an Interim phase. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day via subsurface drip irrigation of 80.4 acres. This permit will not authorize a discharge of pollutants into water in the state.

TRD-202205258

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 28, 2022

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Notice of Water Rights Application

Notice Issued December 22, 2022

APPLICATION NO. 13819

Baros Family Investments, Applicant, 1314 E. Sonterra Blvd. Ste. 401 San Antonio, Texas 78258, has applied for a Temporary Water Use Permit to use the bed and banks of Kuehns Creek, Lavaca River Basin, to convey 100 acre-feet of groundwater for subsequent diversion for mining purposes in Lavaca County. More information on the application and how to participate in the permitting process is given below.

The application and fees were received on November 1, 2021. Additional information was received on November 22 and December 3, 2021, and February 3 and February 7, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 9, 2022. Additional information was received on September 14, 2022.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including, but not limited to, the installation of measuring devices at the discharge and diversion locations. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk 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 Chief Clerk, at the address provided in the information section below, by January 23, 2023. 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 January 23, 2023. The Executive Director may approve the application unless a written request for a contested case hearing is filed by January 23, 2023. 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 WRTP 13819 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 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-202205254

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 28, 2022

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Texas Health and Human Services Commission

Criminal History Requirements for Child Care Operations

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material that is "cumbersome, expensive, or otherwise inexpedient," the charts are not included in the print version of the Texas Register. The charts are available in the online HTML version of the January 6, 2023, issue of the Texas Register.)

26 Texas Administrative Code §745.661 (relating to: What types of criminal convictions may affect a subject's ability to be present at an operation?) states that HHSC will review the three charts listed in subsection (a) of the section annually and publish any changes in January 2023 for public comment in the as an "In Addition" document. Questions or comments about the content of the proposed changes may be directed to Child Care Regulation at (512) 438-3269.

Written comments may be submitted by email to ryan.malsbary@hhs.texas.gov or mailed to:

Ryan Malsbary, Rules Writer

Child Care Regulation, Health and Human Services Commission

P.O. Box 149030

Mail Code E550

Austin, Texas 78751

Any comments must be received within 30 days of publication in the *Texas Register*:

The three charts are titled: (1) Licensed or Certified Child Care Operations: Criminal History Requirements; (2) Foster or Adoptive Placements: Criminal History Requirements; and (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.

Each chart has three parts: (1) an introduction that identifies the types of operations each chart covers, defines certain terms used in the chart, and clarifies certain assumptions; (2) a Table of Contents; and (3) the applicable chart.

Changes made to the charts include:

- (1) Relocating Penal Code §31.16, Organized Retail Theft in all three charts;
- (2) Adding Penal Code §32.51, Fraudulent Use or Possession of Identifying Information, to all three charts;
- (3) Changing the response for the felony level offense to Penal Code §43.02, Prostitution, in all three charts;
- (4) Changing the response for the misdemeanor level offense to Penal Code §43.02, Prostitution, in the Registered Child Care Homes and Listed Family Homes chart;

(5) Adding footnote symbols to the responses for the misdemeanor level offense to Penal Code §43.02, Prostitution, in the Foster or Adoptive Homes chart;

(6) Revising a footnote's language in all three charts; and

(7) Making nonsubstantive changes in all three charts.

TRD-202205192

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 22, 2022

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Department of State Health Services

Certification Limited Liability Report

The Hospital Survey Program in the Center for Health Statistics, Texas Department of State Health Services, has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability under Texas Health and Safety Code, §311.0456. Thirty hospitals requested certification. Each of the requesting hospitals will be notified, by mail, on the determination of whether the statutory certification requirements were met. The certification issued under Texas Health and Safety Code §311.0456 to a nonprofit hospital or hospital system takes effect on December 31, 2022, and expires on the anniversary of that date.

Certified:

One nonprofit hospital system comprised of six hospitals and 10 nonprofit hospitals were determined to be eligible for certification because, based on information that they provided, they satisfied the statutory requirement of providing charity care in an amount equal to or greater than 8 percent of their net patient revenue and they provided 40 percent or more of the charity care in their counties.

1. Seton Healthcare System (Travis County only)
 - a. Ascension Seton Medical Center in Travis County
 - b. Ascension Seton Northwest in Travis County
 - c. Ascension Seton Shoal Creek in Travis County
 - d. Ascension Seton Southwest in Travis County
 - e. Dell Children's Medical Center in Travis County
 - f. Dell Seton Medical Center at the University of Texas in Travis County
2. Ascension Seton Bastrop in Bastrop County
3. Ascension Seton Smithville in Bastrop County
4. CHRISTUS Spohn Hospital Beeville in Bee County
5. Ascension Seton Edgar B Davis in Caldwell County
6. CHRISTUS Good Shepherd Medical Center - Marshall in Harrison County
7. CHRISTUS Southeast Texas - Jasper Memorial in Jasper County
8. CHRISTUS Southeast Texas - St. Elizabeth & St. Mary in Jefferson County
9. CHRISTUS Spohn Hospital Alice in Jim Wells County
10. CHRISTUS Spohn Hospital Kleberg in Kleberg County
11. CHRISTUS Spohn Hospital Corpus Christi Shoreline in Nueces County

Not Certified:

Fourteen nonprofit hospitals were not certified because, based on their survey data, they did not meet the statutory requirement of providing charity care in an amount equal to or greater than 8 percent of their net patient revenue nor did they provide 40 percent of the charity care in their counties.

1. CHRISTUS Santa Rosa - Medical Center in Bexar County
2. Children's Hospital of San Antonio in Bexar County
3. CHRISTUS St Michael Health System in Bowie County
4. CHRISTUS St Michael Rehabilitation Hospital in Bowie County
5. Ascension Seton Highland Lakes in Burnet County
6. CHRISTUS Mother Frances Hospital - Jacksonville in Cherokee County
7. CHRISTUS Santa Rosa Hospital - New Braunfels in Comal County
8. Ascension Seton Hays in Hays County
9. CHRISTUS Mother Frances Hospital - Sulphur Springs in Hopkins County
10. Ascension Providence in McLennan County
11. CHRISTUS Mother Frances Hospital - Tyler in Smith County
12. United Regional Health Care System in Wichita County
13. Ascension Seton Williamson in Williamson County
14. CHRISTUS Mother Frances Hospital - Winnsboro in Wood County

For further information about this report, please contact Dwayne Collins or Andria Orbach in the Center for Health Statistics at (512) 776-7261.

TRD-202205170

Cynthia Hernandez

General Counsel

Department of State Health Services

Filed: December 22, 2022

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Designation of a Practice Serving a Medically Underserved Population

The Texas Department of State Health Services (Department) is required under Texas Occupations Code §157.051 to designate practices serving a medically underserved population. In addition, the Department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the Department has proposed designating the following as practices serving medically underserved populations:

MD Kids Pediatrics, 9708 Business Parkway, Suite 118, Helotes, Texas 78023;

MD Kids Pediatrics, 7939 Pat Booker Road, Suite 130, Live Oak, Texas 78233;

MD Kids Pediatrics, 2188 West State Highway 46, Suite 105, New Braunfels, Texas 78132; and

MD Kids Pediatrics, 1227 Enrique M. Barrera Parkway, San Antonio, Texas 78227.

These designations are based on evidence establishing that these practices serve a disproportionate number of clients eligible to par-

ticipate in federally, state, or locally funded health care programs. Oral and written comments on the designations may be directed to Kristina Juarez, MPH, Research Specialist, Health Professions Resource Center - Mail Code 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; (512) 776-7261 (phone); (512) 776-7344 (fax); or hprc@dshs.texas.gov. Comments will be accepted for 30 days from the publication date of this notice.

TRD-202205169
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: December 22, 2022

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Texas Lottery Commission

Scratch Ticket Game Number 2505 "Super Cashword"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2505 is "SUPER CASH-WORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2505 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2505.

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: 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, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 and \$500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. 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. 2505 - 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	
\$5.00	FIV\$

\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2505), 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: 2505-0000001-001.

H. Pack - A Pack of the "SUPER CASHWORD" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SUPER CASHWORD" Scratch Ticket Game No. 2505.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly one hundred ninety-seven (197) Play Symbols. A prize winner in the "SUPER CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: SUPER CASHWORD PLAY INSTRUCTIONS: 1. The player completely scratches all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in GAME 1 and GAME 2 that exactly match the YOUR 20 LETTERS Play Symbols. 2. If the player has scratched at least 3 complete WORDS within a GAME, the

player wins the prize found in the corresponding PRIZE LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in the other GAME. Each GAME is played separately. 3. Only 1 prize paid per GAME. 4. Only letters within the same GAME that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. 5. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 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. 6. A complete WORD must contain at least 3 letters. 7. GAME 1 can win by revealing 3 to 11 complete WORDS. GAME 2 can win by revealing 3 to 6 complete WORDS. BONUS WORD PLAY INSTRUCTIONS: The player scratches all the letters in the BONUS WORD that exactly match the YOUR 20 LETTERS Play Symbols. If the player scratches a complete BONUS WORD, the player wins the BONUS WORD PRIZE. A completed BONUS WORD cannot be used to win in GAME 1 or GAME 2. Each GAME and the BONUS WORD are played separately. 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 ninety-seven (197) 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 ninety-seven (197) 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 ninety-seven (197) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred ninety-seven (197) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: There will be no correlation between any exposed data on a Ticket and its status as a winning or Non-Winning Ticket.

D. GENERAL: Each Ticket consists of a GAME 1 puzzle grid, a GAME 2 puzzle grid, a BONUS WORD puzzle grid, a BONUS WORD PRIZE play area and a YOUR 20 LETTERS play area.

E. GENERAL: Each Ticket in a Pack will have different GAMES (i.e., the GAME 1 puzzle grid and the GAME 2 puzzle grid will have different words and configurations of words).

F. GENERAL: A Ticket can only win one (1) time per GAME and BONUS WORD for a total of up to three (3) times per Ticket, as dictated by the prize structure.

G. GENERAL: The BONUS WORD Prize Symbols will only appear in the BONUS WORD PRIZE play area and will never appear in the BONUS WORD puzzle grid, GAME 1 puzzle grid, GAME 2 puzzle grid, or YOUR 20 LETTERS play area.

H. GAME 1 AND GAME 2: The GAME 1 puzzle grid will be formatted with at least one thousand (1,000) configurations and the GAME 2 puzzle grid will be formatted with at least five hundred and sixty (560) configurations (i.e., puzzle layouts not including words).

I. GAME 1 AND GAME 2: All GAME 1 puzzle grid configurations will be formatted within a grid that contains eleven (11) spaces (height) by eleven (11) spaces (width). All GAME 2 puzzle grid configurations will be formatted within a grid that contains seven (7) spaces (height) by seven (7) spaces (width).

J. GAME 1 AND GAME 2: No matching words on a Ticket.

K. GAME 1 AND GAME 2: No matching Play Symbols in the YOUR 20 LETTERS play area.

L. GAME 1 AND GAME 2: Each GAME 1 grid will contain the following: a) Four (4) 3-letter words, b) Five (5) 4-letter words, c) Three (3) 5-letter words, d) Three (3) 6-letter words, e) One (1) 7-letter word, f) Two (2) 8-letter words, g) One (1) 9-letter word.

M. GAME 1 AND GAME 2: Each GAME 2 grid will contain the following: a) Two (2) 3-letter words, b) Three (3) 4-letter words, c) Two (2) 5-letter words, d) Two (2) 6-letter words.

N. GAME 1 AND GAME 2: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

O. GAME 1 AND GAME 2: All words will contain a minimum of three (3) letters.

P. GAME 1 AND GAME 2: Words will contain a maximum of nine (9) letters.

Q. GAME 1 AND GAME 2: All words used will be from TX_Approved_Words_Vers.2.042321.doc.

R. GAME 1 AND GAME 2: Words from TX_Prohibited_Words_Vers.2.042321.docx will not appear horizontally in the YOUR 20 LETTERS play area when read from left to right or right to left.

S. GAME 1 AND GAME 2: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR 20 LETTERS play area that matches a word in the grid.

T. GAME 1 AND GAME 2: Each grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted grids (i.e., the same puzzle grid), all "ap-

proved words" will appear in every logical (i.e., 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e., this will not place the word "ZOO" in a position that causes an intersection word to require the second letter to be "Z" when in fact, there are no approved words with a "Z" in the second letter position).

U. GAME 1 AND GAME 2: No consonant will appear more than nine (9) times in the GAME 1 grid.

V. GAME 1 AND GAME 2: No consonant will appear more than seven (7) times in the GAME 2 grid.

W. GAME 1 AND GAME 2: Each non-winning grid (GAME 1/GAME 2) will have two (2) completed words.

X. GAME 1 AND GAME 2: At least fifteen (15) of the YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the GAME 1, GAME 2 and BONUS WORD play areas.

Y. GAME 1 AND GAME 2: The presence or absence of any letter in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

Z. GAME 1 AND GAME 2: GAME 1 will not have more than eleven (11) words completed.

AA. GAME 1 AND GAME 2: GAME 2 will not have more than six (6) words completed.

BB. BONUS WORD: The BONUS WORD can be completed and won, as indicated by the prize structure.

CC. BONUS WORD: The BONUS WORD will contain exactly six (6) letters and will not match any word in either the GAME 1 or GAME 2 grids.

DD. BONUS WORD: The BONUS WORD will have at least two (2) letter play spots opened by the YOUR 20 LETTERS.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER CASHWORD" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$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 \$25.00, \$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 "SUPER CASHWORD" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim

is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER CASHWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "SUPER CASHWORD" 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 "SUPER CASHWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the

Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 32,040,000 Scratch Tickets in Scratch Ticket Game No. 2505. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2505 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	3,417,600	9.38
\$10.00	1,281,600	25.00
\$15.00	1,281,600	25.00
\$20.00	854,400	37.50
\$25.00	640,800	50.00
\$50.00	320,400	100.00
\$100	66,216	483.87
\$200	6,408	5,000.00
\$500	2,403	13,333.33
\$1,000	300	106,800.00
\$100,000	13	2,464,615.38

*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 4.07. 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.

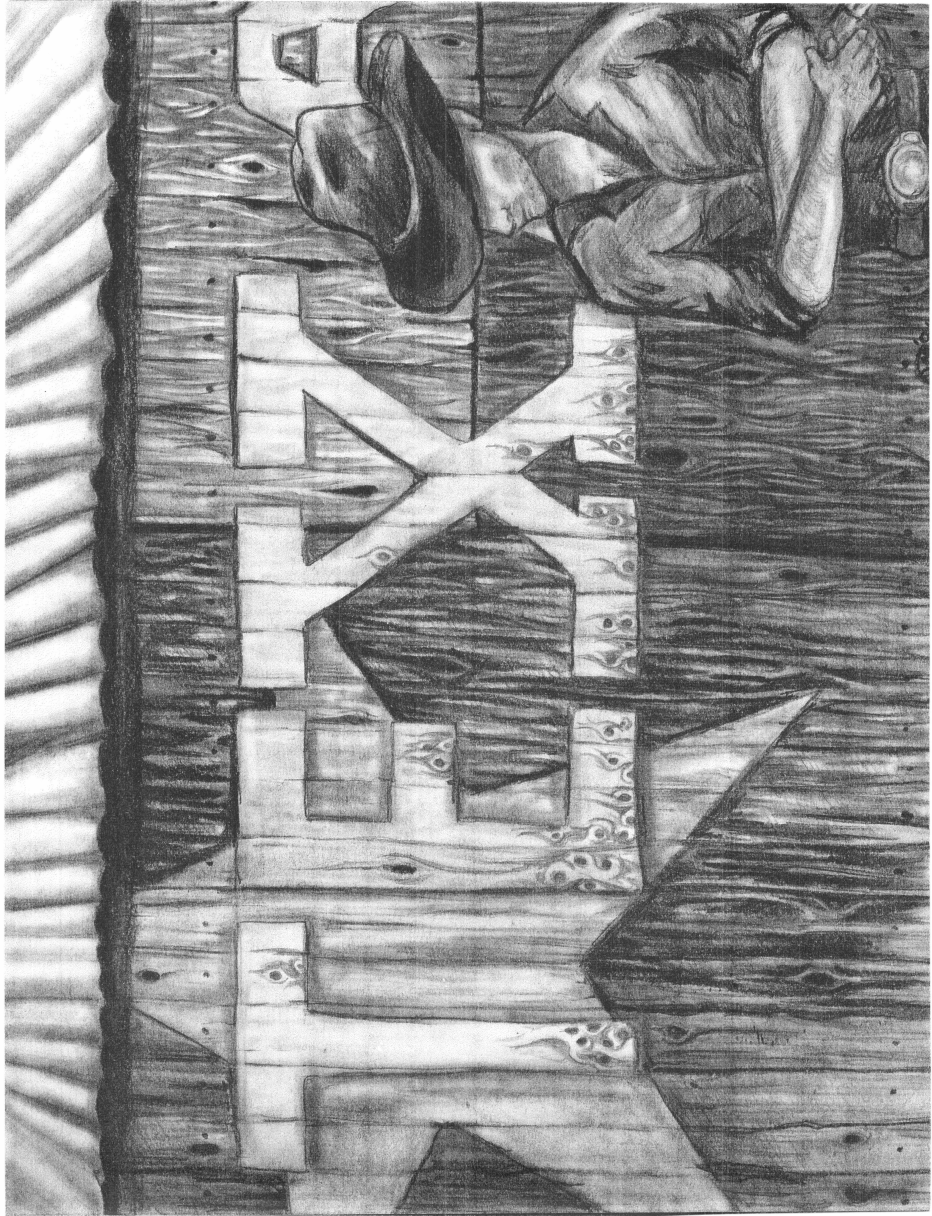
5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2505 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2505, 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-202205260

Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 28, 2022





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 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 “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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